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Vol. V

163

537028

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 11

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

No. 12

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

UNION TRUST CO. AND ILLINOIS STATE TRUST CO., AS TRUSTEES, ET AL.

No. 13

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

ISRAEL A. ABRAMS, ET AL.

No. 14

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

H. C. ORTON, ET AL., ETC.

No. 15

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

GUARANTY TRUST CO. OF NEW YORK, ET AL., ETC.

(Continued on 2nd page cover)

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { JANUARY 17, 1942. FEBRUARY 28, 1942.

CERTIORARI GRANTED JUNE 8, 1942.

(Continued from 1st page cover)

No. 16

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

CHICAGO, TERRE HAUTE & SOUTHEASTERN RY. CO., ET AL.

No. 17

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

UNITED STATES TRUST CO. OF NEW YORK, AS TRUSTEE, ETC.

No. 18

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

TRUSTEES OF PRINCETON UNIVERSITY, ET AL., ETC.

No. 19

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

E. STANLEY GLINES, ET AL., ETC.

No. 32

RECONSTRUCTION FINANCE CORPORATION, PETITIONER,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.

VOL. V pp. 2153 to 2339.

TRANSCRIPT OF RECORD

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 875 - 883

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND MUTUAL SAVINGS BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THE GUTHRIE-MARION PRINTING COMPANY, 810 WEST ADAMS, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No.

IN THE MATTER OF
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,
Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND MUTUAL SAVINGS BANK GROUP,
Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

Index to printed record of proceedings in U. S. District Court i

Clerk's certificates to printed record of proceedings in U. S. District Court 546a, 1052a, 1562a, 2152, 2271

Index to proceedings in U. S. Court of Appeals:

Placita 2273

Order of Feb. 18, 1941, staying submission of plan of reorganization, etc. 2274

Stipulation as to printing record on appeal, etc. .. 2275

Second stipulation as to printing record on appeal, etc. 2280

Order of April 7, 1941, denying petition to dissolve stay, etc. 2287

Third stipulation as to printing record on appeal, etc. 2288

Order of June 18, 1941, denying petitions to dissolve stay, etc. 2296

Opinion by Evans, J., filed Dec. 4, 1941 2299

Judgment reversing, entered Dec. 4, 1941, in cause No. 7590 2318

Judgment reversing, entered Dec. 4, 1941, in cause No. 7610 2319

Judgment reversing, entered Dec. 4, 1941, in cause No. 7611 2319

Judgment reversing, entered Dec. 4, 1941, in cause No. 7612 2320

Judgment reversing, entered Dec. 4, 1941, in cause No. 7613 2321

Judgment reversing, entered Dec. 4, 1941, in cause No. 7614 2321

Judgment reversing, entered Dec. 4, 1941, in cause No. 7615 2322

Judgment reversing, entered Dec. 4, 1941, in cause No. 7616 2323
Judgment reversing, entered Dec. 4, 1941, in cause No. 7617 2323
Petition of Preferred Stockholders Committee for modification of opinion, filed Dec. 18, 1941 2324
Order of Dec. 20, 1941, staying mandates 2329
Order of Dec. 20, 1941, relative to transmission to Supreme Court of original transcript of record . 2330
Answer of Appellees Life Insurance Group and Mutual Savings Bank Group to petition for modification of opinion, filed Dec. 29, 1941 2331
Order of Jan. 9, 1942, relative to taxing of costs .. 2333
Opinion on motion to modify opinion, filed Jan. 12, 1942 2334
Order of Jan. 12, 1942, denying motion to modify opinion 2335
Praecipe for record, filed Dec. 19, 1941 2336
Clerk's certificate 2339

Order Allowing Certiorari 2340

[illegible]

In the Matter of [illegible],

Debtor.

7609—[illegible], Appellant v. [illegible], et al., Appellees.

7610—[illegible], as [illegible], et al., Appellants v. [illegible], et al., Appellees.

7611—[illegible], et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7612—H. S. [illegible], et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7613—GUARANTY TRUST CO. OF NEW YORK, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7614—CHICAGO, [illegible] & SOUTHEASTERN RY. CO., Income Mortgage Bondholders' Committee, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7615—[illegible], Appellant v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7616—TRUSTEES OF [illegible] UNIVERSITY, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7617—E. STANLEY [illegible], et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

U. S. C. C. A. - 7
FILED
JUN 6 1941
KENNETH J. CARRICK
CLERK

TRANSCRIPT OF RECORD FILED MAR. 11, 1941.
PRINTED RECORD.

Note: The document contained in this Volume, being the "Report Summary" and "Report of the Interstate Commerce Commission," was not printed in Volume III of the printed Record. The above report, to be in its proper chronological order should appear at page 1258 of Volume III, just before the "Order Approving Plan of Reorganization, etc."

INTERSTATE COMMERCE COMMISSION.

Washington.

Finance Docket No. 10882.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization.

REPORT SUMMARY.

The capital structure of the present company, including the bonds of the Chicago, Terre Haute and Southeastern, is composed of equipment obligations, bank loan, various issues of mortgage bonds, and certain unsecured claims, all totalling $568,047,436. Interest accrued and unpaid as of December 31, 1938, amounted to $118,878,918. The total capitalization, taking the no-par-value common stock at $100 a share, was $744,760,713. The annual charges on the principal of the total debt alone were $23,739,279.

Under this approved plan, the new capital structure and annual charges will be substantially* as follows:

	Principal amount	Annual charges
Total fixed interest debt	$108,780,470	$4,269,654
Payment to additions and betterments fund, mandatory		2,500,000
Contingent interest debt	115,257,480	5,219,480
Sinking fund payments		543,394
5% preferred stock	108,675,971	5,433,798
Common stock of no par value, shown at $100 a share	215,819,400	
Total capitalization	548,533,321	

The above statement includes the four classes of Terre Haute bonds and the interest charges thereon, as the terms of the bonds would be modified under the plan. The liens of the Terre Haute bonds will not be disturbed. If substantially all the Terre Haute bondholders do not accept the suggested modifications of the bonds and a revision of

* Subject to adjustment for changes in the present capital structure subsequent to December 31, 1938, including payments of accumulated interest, reduction of loans, retirement of equipment obligations, etc.

the present lease, the plan provides that the lease be terminated, together with the debtor's guaranty of the Terre Haute income bonds.

Equipment obligations will remain undisturbed except that the maturities of certain series will be extended, as is now being done by orders of the court.

The allocation of new securities to the present bondholders and the Reconstruction Finance Corporation is shown in the appendix and summarized on page 125 (6990) of the report.

The Commission finds that the equity of the holders of the debtor's preferred stock and common stock is of no value and that the stockholders are not entitled to participate in the plan.

INTERSTATE COMMERCE COMMISSION.

Finance Docket No. 10882.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization.

Submitted April 12, 1939. Decided February 12, 1940.

Plan of reorganization for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, pursuant to section 77 of the Bankruptcy Act, as amended, approved.*

Robert T. Swaine and Roswell L. Gilpatric for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor;

O. W. Dynes, C. S. Jefferson, and M. L. Bluhm for trustees of debtor.

Kenneth F. Burgess, Douglas F. Smith, Paul V. Harper, George Ragland, Jr., D. R. Thomas, Harry Hoffman, Theodore E. Rein, Milton E. Mermelstein, Thomas F. Murphy, Jack E. Bagon, George L. Shearer, McCready Sykes, Meyer Abrams, Edwin

* Previous reports: 212 I. C. C. 150 and 225; 224 I. C. C. 219; 228 I. C. C. 180; 230 I. C. C. 548, and 233 I. C. C. 759. Orders issued without report, (other than orders permitting interventions): November 21, 1935, June 23, and August 5 and 14, 1936; April 24, June 15, and September 15 and 24, 1937; March 12, 1938; September 14, and October 23, 1939; certificate, December 20, 1939.

S. S. Sunderland, Thomas O'G. FitzGibbon, E. D. Jones, Lewis A. Stebbins, John B. Marsh, Edward E. Watts, Jr., Julius Weiss, Sanford H. E. Freund, John A. Hill, Robert M. Becket, Paul W. Williams, Robert H. McRoberts, Thomas S. McPheeters, Jr., David M. Neuberger, James B. Alley, Russell L. Snodgrass, A. Marvin Braverman, Cassius M. Clay, Florence De Haas Dembitz, D. Willard, Jr., William J. Kane, J. T. Haslam, C. Francis Murphy, Joe D. Hughes, Albert K. Orschel, Victor Greiff, Fred N. Oliver, W. V. Hodges, Guido Pantaleoni, John E. Benton, Clyde S. Bailey, Donald J. Sherbondy, Harry W. Oehler, William S. Ervin, Ralph Norgaard, C. Frank Reavis, J. G. Luhrsen, and Reese D. Alsop for interveners.

Other appearances:

Malcolm Mecartney, Samuel W. McIntosh, Alice Cunningham Lacey, Henry T. Hunt, and Donald McMillan.

REPORT OF THE COMMISSION.

By the Commission:

Exceptions to the report proposed by the examiner were filed and oral argument was heard. Our conclusions differ from those of the examiner.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the debtor or the Milwaukee, on June 29, 1935, filed a petition with the District Court of the United States for the Northern District of Illinois, Eastern Division, stating that it was unable to meet its debts as they matured and that it desired to effect a plan of reorganization under section 77 of the act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended. Upon the filing of the petition the court entered an order approving the petition as properly filed, authorizing the debtor to continue in possession of the property, pending the appointment of trustees, and requiring new books of account to be opened as of midnight June 30, 1935.

Pursuant to the provisions of the statute, the debtor filed lists of all known bondholders, stockholders, and general creditors, and the court entered an order determining the

manner in which claims and interests should be filed or evidenced, the date on or before which claims should be filed, and the division of creditors and stockholders into classes. Copies of these documents, together with petitions subsequently filed with, and orders entered by, the court, have been transmitted to us by the clerk of the court, and are of record in the proceeding before us.

By its order of October 17, 1935, after hearing, the court appointed Henry A. Scandrett, Walter J. Cummings, and George I. Haight trustees of the debtor. Objections to the ratification of these appointments were presented, a public hearing was held, and the appointments were ratified conditionally, by order of division 4 in this proceeding on December 28, 1935. 212 I. C. C. 150. The appointees assumed office January 1, 1936. Subsequently, division 4 fixed the maximum compensation to be paid to each of the trustees and their counsel. 212 I. C. C. 225.

The debtor filed with its original petition a plan of reorganization, dated July 1, 1935. By the provisions of section 77(d), after the filing of a plan, unless such plan is found to be *prima facie* impracticable, we are required to hold public hearings thereon, at which any interested party may be heard, and to render a report and order in which we may either approve or refuse to approve a plan. The plan approved may be different from any which has been proposed, but it must, in our opinion, be fair and equitable, among other things afford due recognition to the rights of each class of creditors and stockholders, not discriminate in favor of any class, conform to the law of the land regarding the participation of the various classes, and be compatible with the public interest. After due notice, hearings were held on August 5-7, 1935, June 16 and September 20, 1937, and February 1-4 and March 21-22, 1938. At the hearing in August, 1935, the debtor presented certain amendments of its plan, together with evidence in support of it. The evidence presented at the hearings in 1937 was directed principally to bringing the record of the carrier's earnings, obligations, etc., down to date. The hearings in 1938 were held primarily for the purpose of permitting the presentation of a plan of reorganization by the committee representing a group of institutional investors, an intervener, owning a large amount of the Milwaukee's securities. Evidence in support of and in opposition to such plan was introduced. The hearings were finally closed on March 22, 1938, and briefs were filed.

In addition to the group of institutional investors, whose interests and activities in connection with the case will be described later, the interveners at the August, 1935, hearing were the Anglo-Continentale Treuhand A. G. and the Imperial Trust Company, Limited, owners of bonds of the Milwaukee & Northern Railroad Company, hereinafter referred to as the Northern, the United States Trust Company of New York, trustee under the general mortgage of the Chicago, Milwaukee & St. Paul Railway Company, hereinafter referred to as the old Milwaukee, Israel Abrams *et al.*, owners of certain of the debtor's bonds, the Guaranty Trust Company of New York and Merrel P. Callaway, trustees under the debtor's 50-year mortgage, the Union Pacific Railroad Company, and Thomas E. Noonan, owner of certain bonds of the Chicago, Milwaukee & Gary Railway Company, hereinafter called the Gary. Permission to intervene was granted at the later hearings, or by orders of division 4, to the independent committee for protection of the debtor's bondholders, the City Bank Farmers Trust Company, trustee under the mortgages of the Northern, the National City Bank of New York and William W. Hoffman, trustees under the debtor's convertible adjustment mortgage, the Chemical National Bank & Trust Company, trustee under the debtor's first and refunding mortgage, the St. Louis Union Trust Company and Illinois State Trust Company, trustees under the Gary mortgage, Thos. Wolstenholme Sons & Co., Incorporated, and Alfred Wolstenholme, owners of certain of the debtor's adjustment-mortgage bonds, the Reconstruction Finance Corporation, hereinafter called the Finance Corporation, the Railroad Credit corporation,* the Director General of Railroads, the protective committee for the debtor's preferred stock, Victor Greiff, the Mutual Savings Bank Group, William Church Osborn, the Illinois Commerce Commission, the United States Treasury Department, the State of Minnesota, the Minnesota Railroad and Warehouse Commission, the protective committee for the debtor's 50-year mortgage bonds, the Railway Labor Executives Association, and a group of holders of the first and refunding bonds of the Chicago, Terre Haute and Southeastern Railway Company, hereinafter called the Terre Haute.

The above-mentioned committee for the debtor's pre-

* Withdrew from the proceeding subsequent to the close of the hearings.

ferred stock was authorized to act as such by order of division 4, in this proceeding on November 23, 1937. 224 I. C. C. 219. The authorized membership consists of H. C. Orton, D. C. Wolf, James B. Johnston, Karl A. Meyer, Rucker Penn, and Lynn H. Dinkins. The protective committee for the 50-year mortgage bonds was authorized on May 24, 1938, 228 I. C. C. 180, its members being E. Stanley Glines, Norton H. Fry, W. Rodman Peabody, R. Harland Shaw, and C. Oliver Wellington. The group of Terre Haute bondholders, consisting of Lemuel H. McHenry, S. A. Culbertson, W. C. Semple, A. J. Early, and the Guaranty Trust Company of New York, was permitted to intervene specially and not generally for the sole purpose of objecting to the jurisdiction of the Commission and the court to authorize a cancellation of the existing lease of the Terre Haute, a consolidation of its properties with those of the debtor, or a modification of the rights of the Terre Haute first and refunding mortgage bondholders in the Terre Haute properties. The Terre Haute has not filed a petition under section 77. The court, however, in dividing the creditors and stockholders into classes, included the Terre Haute bonds, placing each of the four bond issues in a separate class.

Subsequent to the hearings and the issue of the examiner's proposed report, the protective committee for the holders of preferred stock filed a petition requesting that the proceeding be reopened for the filing of a plan based upon a consolidation of the debtor's properties with those of the Chicago and North Western Railway Company. A protective committee for the holders of common stock of the latter company filed a similar petition at the same time for the reopening of the proceeding for reorganization of that carrier, Finance Docket No. 10881. After hearing oral argument on the questions involved, division 4, on January 19, 1939, denied both petitions. The preferred stockholders' committee later filed a petition requesting that the Milwaukee proceeding be reopened for the taking of new evidence regarding traffic, earning power, and other matters. This petition was also denied by Division 4.

The topics hereinafter treated and the order thereof are as follows:

	Sheet
Classes of creditors and stockholders	8 (Page 6887)
The transportation properties	
Lines composing the system	10 (Page 6888)
Valuation data	12 (Page 6890)
Investments in affiliated companies	13 (Page 6891)
Present capital structure	
Balance sheets	14 (Page 6892)
Debtor's general mortgage	15 (Page 6893)
Milwaukee & Northern mortgages	17 (Page 6894)
Equipment obligations	18 (Page 6895)
Chicago, Terre Haute & Southeastern mortgages	20 (Page 6897)
Chicago, Milwaukee & Gary mortgage	21 (Page 6898)
Debtor's first and refunding mortgage	22 (Page 6898)
Debtor's 50-year mortgage	24 (Page 6900)
Debtor's convertible adjustment mortgage	24 (Page 6900)
Bellingham Bay & British Columbia mortgage	24 (Page 6901)
Reconstruction Finance Corporation loans	24 (Page 6901)
Railroad Credit Corp. loans	25 (Page 6902)
Unsecured obligations and claims	26 (Page 6902)
Free assets	27 (Page 6903)
Joint liabilities	28 (Page 6904)
Interest in non-carrier companies	28 (Page 6904)
Traffic; earnings	
Summary of record, including 1936	29 (Page 6905)
Income available for interest, 1921-38	33 (Page 6910)
Bureau of Accounts report	34 (Page 6911)
Taxes, emergency freight charges, salaries	34 (Page 6911)
Debtor's plan of 1935	
Description	35 (Page 6912)
Evidence introduced in 1937	41 (Page 6917)
Institutional Investors' Group plan of 1938	
Description	43 (Page 6920)

	Sheet
Debtor's modifications of group plan	
Principal modifications described	60 (Page 6935)
Interveners' views and contentions	
Criticisms of the plans filed and the plan recommended by the examiner	69 (Page 6944)
Commission's conclusions and plan	
Treatment of the Terre Haute properties	77 (Page 6950)
The new capital structure	85 (Page 6958)
Discussion of suggested mortgage provisions	90 (Page 6962)
New first mortgage	97 (Page 6968)
Reserve and retirement fund	103 (Page 6973)
New general mortgage	106 (Page 6975)
Terre Haute mortgages	111 (Page 6979)
Application of available net income	113 (Page 6981)
Additions and betterments fund	115 (Page 6982)
New preferred stock	121 (Page 6986)
New common stock	123 (Page 6988)
Allocation of new securities	124 (Page 6988)
Treatment of — Equipment obligations	126 (Page 6991)
R. F. C. Claims	127 (Page 6991)
Mil. & Nor. first mortgage bonds	129 (Page 6994)
Terre Haute bonds	132 (Page 6995)
General mortgage bonds	133 (Page 6996)
Mil. & Nor. cons. mtg. bonds	133 (Page 6996)
50-year 5% bonds of '75	135 (Page 6998)
Adjustment mortgage bonds	141 (Page 7003)
Gary bonds	144 (Page 7006)
Present stock	145 (Page 7007)
Unsecured claims	149 (Page 7009)
Taxes, executory contracts, claims entitled to priority, joint liabilities, etc.	151 (Page 7011)
Reorganization committee	152 (Page 7012)
Board of directors	153 (Page 7013)
Finance Committee	153 (Page 7013)
Voting trust	154 (Page 7014)
Sale provision	155 (Page 7014)
Construction of the plan by the court	156 (Page 7015)

Classes of Creditors and Stockholders.

Upon petition by the debtor, setting forth in detail the claims and interests of its known creditors and stockholders, the court, by an order entered July 6, 1935, divided the creditors and stockholders into 31 separate classes, and described four classes of obligations for which appropriate provision had been made in the plan, and which would either not be disturbed, paid in cash, or assumed by the reorganized company to the extent not previously paid pursuant to the orders of the court.

Classes Nos. 1 to 7, inclusive, represent the several classes of system bonds; classes 8 to 19, inclusive, represent the debtor's equipment-trust certificates of 12 series, ending with series N; class 20 represents the debtor's obligation under the sublease and agreement with the General American Tank Car Corporation; class 21, the debtor's secured notes to the Finance Corporation; class 22, the debtor's secured notes to the Federal Emergency Administration of Public Works; class 23, the debtor's secured notes to the Railroad Credit Corporation; class 24, the debtor's noncumulative participating preferred stock; class 25, the debtor's common stock; classes 26 to 29, inclusive, the bonds issued by the Terre Haute and its controlled companies; class 30, claims which would have been entitled to priority over existing mortgages if a receiver in equity had been appointed, and other claims entitled to priority under acts of Congress relating to bankruptcy; and class 31, all other claims, obligations, and liabilities not included in the descriptions of classes 1 to 30, inclusive. The order stated that the foregoing division of creditors and stockholders into classes was without prejudice to the rights of such creditors and stockholders, and of the debtor, in any litigation or controversy in respect of the claims and interests represented thereby, in the event the debtor's plan of reorganization is not confirmed and consummated and such claims and interests disposed of in accordance with said plan.

The court has authorized the debtor to disaffirm several leases of property and from time to time has authorized extensions of the date for the disaffirmance of contracts. Extensions of time for the filing of claims were likewise granted. On March 6, 1937, the court entered an order appointing a special master, to whom claims filed with the

clerk of the court were to be referred, and by a later order directed the special master to hold hearings with reasonable dispatch and report to the court the allowance and classification of claims.

The Transportation Properties.

The debtor's system extends from Chicago, Milwaukee, and other eastern termini to Seattle, Tacoma, and other points on the Pacific coast, with lines extending to Duluth, Kansas City, Omaha, Rapid City, Fargo, and many other cities. Approximately 11,115 miles of road are operated, in 12 States, of which mileage 9,906 miles of road are solely owned. The electrically operated lines are 658 miles in length. The grand total of all tracks operated is 16,625 miles. Including equipment used on the Terre Haute, the equipment owned as of December 31, 1936, comprised 1,260 locomotives, 56,309 revenue freight-train cars, 3,772 units of non-revenue freight equipment, 980 passenger-train cars, and 6 units of floating equipment.

The debtor was organized under the laws of the State of Wisconsin on March 31, 1927, and on January 14, 1928, took over the properties of the old Milwaukee, pursuant to authority granted by us January 4, 1928, in *Chicago, Milwaukee & St. Paul Reorganization*, 131 I. C. C. 673. Under the same date, we issued our report in *Chicago, Milwaukee & St. Paul Investigation*, 131 I. C. C. 615, in which the history, management, and financial practices of the old Milwaukee previous to the receivership in 1925, were described.

The old Milwaukee completed its line west from the Missouri River to the Pacific Coast in 1909, and the final cost of this extension was more than $250,000,000. It acquired the property of the Northern, in 1893, subject to the lien of two mortgages. It acquired control of the property of the Gary, in 1922, subject to the lien of one mortgage. *Control of C. M. & G. Ry. by C., M. & St. P. Ry.*, 71 I. C. C. 124. The present Milwaukee acquired the Gary property in 1930, assuming obligation for the Gary's debts, including $3,000,000 of its bonds outstanding in the hands of the public. *Chicago, M., St. P. & P. R. Co. Acquisition*, 158 I. C. C. 770. The present Milwaukee's assumption of obligation with respect to the Northern bonds will be de-

scribed later. The Northern has no longer any corporate existence.

The present Milwaukee acquired an interest in the Longview, Portland & Northern Railway, a part of the line of the Ontonagon Railroad Company, and parts of the La Crosse & Southeastern Railway. *Northern Pac. Ry. Co. Acquisition*, 175 I. C. C. 253; *Chicago, M., St. P. & P. R. Co. Acquisition*, 184 I. C. C. 103; *LaCrosse & S. E. Ry. Co. Abandonment*, 189 I. C. C. 785. Its interest in terminal companies, affiliated carrier corporations, and affiliated noncarrier corporations will be stated later.

The old Milwaukee acquired control of the Terre Haute by the purchase of capital stock* and the execution of a lease for a term of 999 years from July 1, 1921, the rental reserved in the lease being the assumption of the principal and interest of $19,154,000 of bonds issued by the Terre Haute and its subsidiaries, together with the payment of not exceeding $12,000 a year to cover the expense of maintaining the Terre Haute's corporate organization. *Acquisition of C., T. H. & S. En. Ry. by C., M. & St. P. Ry.*, 70 I. C. C. 20. The capital stock is entitled to 41,730 votes and the holders of the Terre Haute income bonds, under the terms of the mortgage, are entitled to 63,360 votes. The lines leased embraced approximately 298 miles of main line, 39 miles of branch lines, and 13 miles of other main lines operated under trackage rights. This lease was acquired by the debtor in 1928.

Since the 1928 reorganization and prior to the institution of the present proceeding, the Milwaukee, by permission of the Commission, division 4, abandoned various sections of its lines, aggregating more than 300 miles in length. Beginning in 1933, the company made studies looking to the possible abandonment of various other lines of light traffic, and has furnished statements for the record showing the estimated results of operating 43 segments of the system, aggregating approximately 3,400 miles in length. Between July 1, 1935, and June 3, 1937, 34.9 miles of line were abandoned, but, as to one segment 16.8 miles in length, operation is continued over another line, jointly owned. As of June, 1937, the trustees had decided to abandon entirely 73.4 additional miles of line and to abandon 44.3 miles of other line in connection with arrange-

* 1,259 shares are outstanding, not owned by the Milwaukee.

ments permitting the Milwaukee to operate over the lines of other carriers under either trackage rights or joint ownership.

The report of the Bureau of Valuation on the elements of value of the system as of December 31, 1935, filed in the record by order of division 4, shows the miles of line owned and used by the debtor as 10,019.1 miles, and the miles of line owned by the Terre Haute as 360.2 miles. For the debtor, the original cost of the property owned, except land, was $694,263,606, the cost of reproduction new $818,280,465, the cost of reproduction, less depreciation, $546,341,054, the value of lands and rights $78,259,228, and the amount of working capital $7,727,300. For the Terre Haute, the corresponding amounts, omitting working capital, were $24,086,120, $27,994,556, $19,357,027, and $1,323,087. For the combined roads, the cost of reproduction new, less depreciation, plus the value of lands and rights and the above-stated amount of working capital, was $653,007,696. The cost of reproduction less depreciation was determined in accordance with methods frequently explained in our reports dealing with valuation for rate-making purposes. If to this sum be added the net additions and betterments reported by the carriers for the years 1936 and 1937, the total, as of December 31, 1937, would be $662,759,838. With the additions and betterments as computed by the debtor, the total would be $657,846,433. In preparing its report, the Bureau of Valuation adopted the debtor's statement of the property embraced under the lien of each mortgage.

The final rate-making value of the combined common-carrier properties, as found by division 1, was $621,338,759, as of dates of valuation in 1915, 1916, and 1918. To this the debtor adds the amount of additions and betterments between valuation dates and June 30, 1935, adjusted for depreciation at stated rates, arriving at a total of $728,446,507. On brief, the debtor asserts that this valuation, brought down to December 31, 1937, would be $735,703,231.

As reported on April 30, 1937, the debtor's investments in the securities of affiliated companies included stocks having a total par value of $9,560,801 and a book value of $5,162,145, bonds having a face value of $4,290,000 and a book value of $1,497,801, notes in the total amount of $10,256,720, and advances of $5,393,647.

Present Capital Structure.

There is shown below, for purposes of comparison, a summary of the debtor's general balance sheet of May 31, 1935, or shortly before the filing of the petition under section 77, and that of December 31, 1937, which is the latest balance sheet of record.

	May 31, 1935	*Dec. 31, 1937*
Investment in road and equipment	$681,268,860	$691,592,842
Total investments	711,696,341	719,621,317
Cash	6,014,531	10,005,020
Total current assets	23,819,018	29,801,024
Deferred assets	2,804,933	3,841,830
Unadjusted debits	3,303,906	3,875,862
Total Assets	$741,624,198	$757,140,033
Capital stock	224,482,604	224,434,854
Governmental grants	162,825	544,920
Long-term debt	474,076,809	466,497,991
Total current liabilities	23,949,957	57,200,062
Deferred liabilities	49,216,007	73,996,613
Unadjusted credits	50,101,888	60,237,330
Corporate surplus (Def.)	80,365,892	125,771,737
Total Liabilities	$741,624,198	$757,140,033

As a part of the reorganization of 1928, the debtor assumed obligation in respect of the general-mortgage bonds of the old Milwaukee, the equipment-trust obligations dated prior to 1928, the four bond issues of the Terre Haute, and the old Milwaukee's obligation with respect to the mortgages of several jointly owned terminal companies. It acquired the Gary's capital stock and $2,700,000 of the Gary's first mortgage bonds, out of $5,700,000 of bonds outstanding. In 1930 it assumed obligation as to the principal and interest of the remaining $3,000,000 of bonds. The new securities issued in connection with the 1928 reorganization included bonds issued under the debtor's 50-year mortgage and adjustment mortgage, each dated February 2, 1925. (No first and refunding mortgage bonds were issued until 1934.) There was authorized an issue of 1,198,458 shares of new 5-per cent noncumulative

preferred stock, having a par value of $100 a share, and 1,174,060 shares of new common stock having no par value. The total capitalization was increased, but, as compared with the former fixed interest charges of $21,544,066 per annum, the new plan proposed fixed interest charges of $13,663,489, contingent interest charges of $9,143,685, and contingent sinking-fund charges of $1,139,368 per annum, beginning in 1936. The plan provided for the payment in cash of accrued interest on various old bond issues which were in default, of most of the debt to the Government, of the cost of new equipment, additions and betterments, working capital, and the expenses of the receivership and reorganization, all by means of advances from the stockholders approximating $70,000,000, for which new stock and 50-year 5-per cent bonds were issued to the stockholders.

During the present debtor's regime, up to the close of 1934, the investment in road and equipment was increased by additions and betterments totaling $82,376,644, the net increase after retirements and conversions being $44,135,241. During the same period, the increase in total debt was approximately $36,000,000, not including the accumulation of interest on the adjustment-mortgage bonds.

The general-mortgage bonds of the old Milwaukee outstanding, all of which are due May 1, 1989, consist of $48,241,000 of series A 4-per cent bonds, $8,950,000 of series B 3½-per cent bonds $42,597,000 of series C 4½-per cent bonds, $24,000,000 of series E 4½-per cent bonds, and $15,000,000 of series F 4¾-per cent bonds, a total of $138,788,000, principal amount, of bonds. The annual interest charges thereon are $5,952,225. In addition, there have been nominally issued and pledged, as part of the collateral security for loans from the Finance Corporation, $11,212,000 of series G 5-per cent bonds. Following the filing of the debtor's petition under section 77, the court authorized the trustees from time to time to pay two-thirds of the interest due on the general-mortgage bonds up to October 1, 1936. This partial payment of interest, conforming to the plan which the debtor had proposed, evidently could not be continued because of lack of funds. As of December 31, 1938, the interest on the general-mortgage bonds, accrued and unpaid, amounted to $17,580,193. This is the amount of interest included in the

total debt considered for the purpose of the plan, without adjustment for $1,891,894.58 of back interest due in 1935 and 1936, the payment of which was authorized by the court in its order of December 12, 1939.

As stated by the debtor, as of June 30, 1935, the properties subject to the first lien of the general mortgage included 6,044 miles of road wholly owned, lying east of the Missouri River, 11.3 miles of road jointly owned, various trackage rights, 1,030 locomotives, 24,690 freight cars, 885 passenger cars, and 2,013 units of work equipment not subject to the lien of equipment trusts, 7,000 shares of the capital stock of the Chicago Union Station Company, and certain cash. Subject to the lien of equipment obligations totaling $25,031,319, the general mortgage was also secured by a first lien on 119 locomotives, 32,441 freight cars, 79 passenger cars, and 26 units of work equipment. It appears that no equipment deficiencies have been incurred under this mortgage.

The first-mortgage 4½-percent bonds of the Northern are outstanding in the amount of $2,117,000, and the consolidated mortgage 4½-percent bonds in the amount of $5,072,000, both issues maturing June 1, 1939. In addition, $38,000 of the first-mortgage bonds and $20,000 of the consolidated mortgage bonds are pledged under the debtor's first and refunding mortgage. Although the Northern lines became the property of the present debtor through the reorganization of 1928, the obligation in connection with the bonds was not formally assumed until 1934, when division 4 authorized the debtor to assume obligation in respect of the principal and interest, at the same time authorizing the extension of the maturity of the bonds from June 1, 1934, to June 1, 1939. *Chicago, M., St. P. & P. R. Co. Bonds*, 199 I. C. C. 489. The June 1, 1934, maturity represented a previous extension from June 1, 1910, in the case of the first-mortgage bonds, and from June 1, 1913, in the case of the consolidated mortgage bonds.

Under the orders of the court, the trustees were authorized to pay all interest when due on the Northern bonds up to December 1, 1937, including interest on certain consolidated mortgage bonds, the holders of which had not agreed to the last extension. In its exceptions to the examiner's proposed report the debtor stated that, without further orders of the court, the total amount of interest accrued on both classes of Northern bonds, not authorized

to be paid, would be $350,464. The Northern first mortgage is secured by a lien on approximately 110 miles of wholly owned line and 16 miles of jointly owned line, lying between North Milwaukee and Green Bay, Wis., together with certain old cars. The consolidated mortgage is secured by a first lien on approximately 268 miles of line situated north of Green Bay, and by a second lien on the line south of that point. On the date of its acquisition by the old Milwaukee, the Northern owned 34 locomotives, 990 freight-train cars, 37 passenger-train cars, and 2 units of work equipment. At the time of the hearing in 1935 only eight cars remained in existence. The vacancies up to June 30, 1935, were estimated in excess of $2,000,000. Although some question was raised as to the meaning of the covenants of the Northern mortgages with respect to the maintenance of a specific amount of equipment, counsel for the debtor concedes that a default exists in this respect.

The debtor's equipment-trust obligations outstanding in the hands of the public on June 30, 1935, consisted of certificates of series A, C, D, E, F, G, H, J, K, and L, aggregating $24,011,000, principal amount. Certificates of series M and N were then held by the Federal Emergency Administration of Public Works in the amount of $1,537,000 and $120,000, respectively. The equipment-trust obligations of series later than A, C, and D represent the most modern and valuable equipment used on the system. As of June 30, 1935, the debtor was also obligated to pay $822,119 to the General American Tank Car Corporation, under a sublease of equipment, $62,200 to the Austin Western Road Machinery Company, under a lease agreement, and $50,866 to the Evans Products Company.

As of December 31, 1938, the debtor showed the principal amount of equipment obligations outstanding as $28,967,240, consisting of $17,048,800 of series A, C, D, E, F, G, H, J, K, and L certificates, $1,225,000 of series M and series N certificates, $10,097,000 of series O, series P, series Q, and series R certificates, and obligations of $596,440 under lease agreements. On March 21, 1938, division 4 authorized the debtor's trustees to issue and sell $2,235,000 of series S equipment-trust certificates, *Chicago, M. St. P. & P. R. Co. Trustees' Equip.-Trust Certifs.*, 224 I. C. C. 669, and on April 13, 1939, authorized $1,920,000 of series T certificates, 233 I. C. C. 33. The payment of maturing certificates on January 1, 1939, reduced the total outstand-

ing by $218,031. In March, 1939, the court authorized the trustees to make a conditional sales contract for the purchase of six Diesel locomotives costing $418,790. On the above basis the total amount of equipment obligations to be considered in connection with the final plan is $33,322,999 and the annual charges thereon approximately $1,286,000. This does not give effect to $5,080,000 of equipment-trust certificates, series U, the issue of which was authorized by Division 4 in report and order dated November 21, 1939. *Chicago, M., St. P. & P. R. Co. Trustees Equip. Trust Certifs.*, 236 I. C. C. .....

Since the beginning of the trusteeship the court has permitted the trustees to pay 20 percent of the amount of each maturing equipment-trust certificate of Series A, C, D, E, F, G, H, J, K, and L, on the theory of the debtor's original plan, whereby the remaining payments would be extended to mature 20 percent annually in one, two, three, and four years, respectively. In the case of the equipment-trusts of other series, all maturing certificates have been paid. No unpaid interest has accrued on any of the equipment obligations.

The so-called Terre Haute bonds include the Bedford Belt Railway Company first-mortgage 5-percent bonds, matured July 1, 1938, of which $250,000, principal amount, are outstanding in the hands of the public and $100,000 are pledged under the Terre Haute first and refunding mortgage, the Southern Indiana Railway Company first-mortgage 4-percent bonds, due February 1, 1951, of which $7,287,000 are outstanding, the Terre Haute first and refunding mortgage 5-percent bonds, due December 1, 1960, of which $8,056,000 are outstanding, $1,515,000 are pledged under the Milwaukee's first and refunding mortgage, and $2,000 are held in the treasury of the Terre Haute, and the Terre Haute income-mortgage, 50-year 5-percent bonds, due December 1, 1960, of which $6,336,000 are outstanding and $164,000 are held in the treasury of the Terre Haute. The interest requirements of the bonds outstanding under the four mortgages amount to $1,023,580 per annum, the payment of which constitutes the debtor's chief obligation under the Terre Haute lease. There has been no default in the payment of this interest.

The Bedford Belt mortgage constitutes a first lien on 4.66 miles of line, and the Southern Indiana mortgage a first lien on 240.92 miles of line, in Indiana. The latter

mortgage is also secured by a first lien on certain equipment and capital stock, and by a second lien on all the property which is subject to the first lien of the Bedford Belt mortgage. The Terre Haute first and refunding mortgage is secured by a first lien on 115.17 miles of line, on certain equipment and capital stock, and by a junior lien on the properties of the Bedford Belt and Southern Indiana. The lien of the income mortgage is junior to that of the first and refunding mortgage. The equipment vacancies under the terms of the Terre Haute mortgages and the lease were estimated at about $5,000,000 as of June 30, 1935. As of December 31, 1936, the amount had increased to $6,832,556, and as of December 31, 1937, to $7,106,149.

The bonds issued under the Gary first mortgage include $3,000,000, principal amount, outstanding in the hands of the public, and $2,700,000 pledged under the Milwaukee first and refunding mortgage, the latter bonds not being guaranteed. The Gary bonds bear interest at the rate of 5 percent per annum, are due April 1, 1948, and are secured by a first lien on 83 miles of line and certain other property. The accrual of unpaid interest on the bonds outstanding, as of December 31, 1938, was $562,500. Nearly all of the equipment owned by the Gary when the property was acquired by the Milwaukee has been retired. The mortgage does not contain any covenant requiring the maintenance of equipment in any specific amount, but the trustee under the mortgage contends that a default has occurred and that the mortgage is a lien on all rolling stock which replaces that retired.

The bonds issued under the debtor's first and refunding mortgage aggregate $9,866,000, principal amount, of which $6,000,000 were pledged, along with other securities, as collateral security for loans from the Finance Corporation, $2,665,000 were pledged as collateral security for a public works loan, $258,000 were pledged with the trustee of equipment trust, series M, and $943,000 are held in the treasury. These bonds are of series A, bear 6 percent interest, and mature June 1, 1943. Subject to a judicial determination of the status of certain separate lines, referred to by the witnesses as "pieces of lines east", this mortgage is secured by a first lien on 3,358.1 miles of wholly owned line, lying mostly west of the Missouri River, and 77.2 miles of jointly-owned line, on the leasehold interest under the Terre

Haute lease, various trackage rights, approximately 144 units of equipment, and a large amount of the stocks and bonds of railroad and terminal companies. As of January 31, 1938, the trustee held $789,133 of cash, of which all but $2,000 represented interest and dividends paid on these securities. The mortgage is further secured by a second lien on all the properties with respect to which the debtor's general mortgage, the Northern consolidated mortgage, the Gary first mortgage, and the Bellingham Bay & British Columbia Railroad Company first mortgage represent first liens. It is further secured by a third lien on the properties under the first lien of the Northern first mortgage and the second lien of the Northern consolidated mortgage.

At the hearing in March, 1938, the trustee of the debtor's general mortgage presented a list of the so-called pieces of lines east, asserting that these lines are subject to the first lien of that mortgage by virtue of its after-acquired property clause. According to the debtor's evidence the aggregate mileage involved is approximately 575 miles, while the trustee shows a total of approximately 645 miles, ostensibly based on the construction records. The list was admitted merely as evidence of the trustee's assertion with respect to the lien of the general mortgage. The matter has a bearing on the question of the distribution of earnings as between the general mortgage lines and the first and refunding mortgage lines.

Among the blocks of stock pledged under the first and refunding mortgage are the stocks of the Gary, the Terre Haute, and the Indiana Harbor Belt Railroad Company owned by the debtor. The Finance Corporation, through its witness, introduced testimony to show the high value of the stock of the latter company. Considering all the securities pledged under this mortgage and the sale value and salvage value of the western lines, the witness testified that the collateral pledged with the Finance Corporation is adequate, irrespective of the earning power of the lines subject to the lien of the first and refunding mortgage.

The first and refunding mortgage provides that equipment worn out and destroyed shall be replaced in a specified manner. The debtor estimated that the amount of all equipment vacancies on the system, as of June 30, 1935, was $13,994,174, of which approximately $850,178 repre-

sented the obligation with respect to equipment subject to the first lien of the first and refunding mortgage, and practically all the remainder represented equipment subject to the first lien of the general mortgage. The debtor expected these deficiencies to increase materially.

Bonds issued under the debtor's 50-year mortgage aggregate $106,395,096, principal amount, bearing interest at the rate of 5 percent per annum and due February 1, 1975. Included in this amount, as of June 30, 1935, were $426,317 of bonds held for issue for securities not yet presented for exchange under the 1925 plan. The interest requirements of the total issue are $5,319,755 per annum, and the accruals of unpaid interest, as of December 31, 1938, amounted to $20,835,706. The mortgage is secured by a second lien on the lines of railroad and other property subject to the first lien of the first and refunding mortgage, by a third lien on all property subject to the second lien of that mortgage, and by a fourth lien on all property subject to the third lien of that mortgage.

Under the debtor's convertible adjustment mortgage, bonds in the amount of $182,873,693 have been issued, including $152,487 of bonds which, as of June 30, 1935, were held for issue for securities not presented under the 1925 plan. Interest on these bonds became cumulative from January 1, 1930, and the accruals thereof were $47,547,160 as of June 30, 1935, and $79,550,055 as of Decembe 31, 1938. The lien of this mortgage is junior to that of the 50-year mortgage. The bonds have an interest rate of 5 percent per annum and mature January 1, 2000.

The $301,000 of first-mortgage 5 percent bonds issued under the Bellingham Bay & British Columbia Railroad Company first mortgage were due on December 1, 1932. They are owned by the debtor and are among the securities pledged with the Finance Corporation. They are secured by a first lien on 67 miles of line in the State of Washington and on a small amount of equipment.

Of the first and second loans made to the debtor by the Finance Corporation the balance due is $11,499,462.50. Interest at the rate of 4 percent per annum has been fully paid on these loans. The Finance Corporation acquired, by purchase, $2,317,000 of 4 percent collateral-trust notes issued by the debtor to the Federal Emergency Administration of Public Works, which obligation has been reduced to $1,711,000 by payments of principal, and all interest has

been paid. The Finance Corporation also purchased from the Public Works Administration the series M and series N equipment-trust certificates outstanding on February 29, 1936. As of December 31, 1938, the amount of such certificates outstanding will be $1,225,000. The Finance Corporation purchased the certificates of series O directly, pursuant to the order of division 4 in *Chicago, M., St. P. & P. R. Co. Trustees' Equip. Trust Certifs.* 212 I. C. C. 459.

Disregarding equipment-trust obligations, the aggregate indebtedness to the Finance Corporation is $12,920,463,* and the collateral applicable thereto consists of $11,212,000 of the debtor's general mortgage series-G bonds, $8,665,000 of its first and refunding mortgage series-A bonds, $301,000 of the Bellingham Bay & British Columbia first-mortgage bonds, and the assignment of the debtor's advances to the Chicago Union Station Company in the amount of $3,110,861.

The maturities of the debtor's two notes to the Railroad Credit Corporation, originally issued in 1932 and 1933, were extended from time to time under orders of the court. As of December 31, 1937, the first note, in the amount of $2,000,000 had been reduced to $366,374 principally through distributive credits under the marshalling and distributing plan, 1931, and the second note, in the amount of $1,710,000 had been paid in full largely from the funds of the Milwaukee Land Company. Interest on the notes has been paid when due. The emergency freight charges paid to the Credit Corporation exceeded, by $498,513, the distributions made to the debtor up to the close of 1937. The collateral remaining pledged for the first note consisted of (a) the distributive shares of the debtor under the marshalling and distributing plan, (b) 4,995 shares of the capital stock of the Milwaukee Land Company, (c) an agreement for the payment to the Credit Corporation of the operating profits of the land company and the subordination, to the claim of the Credit Corporation, of the claims of the debtor for advances to the land company for operating expenses, and (d) the debtor's equity in the collateral pledged with the Finance Corporation. The claim of the Railroad Credit Corporation was fully liquidated as of June 27, 1938, and the pledged securities were surrendered to the debtor's trustees.

* Giving effect to a repayment of $290,000 made on January 3, 1939.

At the time of the filing of its original plan, the debtor reported a total of $20,284,913 of direct unsecured obligations and claims, including the estimated amount of $535,000 for the settlement of about $3,000,000 of personal injury claims. The debtor stated that, except about $500,000 of claims not entitled to priority, for which the plan made provisions, all other claims probably would be paid in cash. Statements dated May 15, 1937, showed $4,335,304 as the estimated amount required to settle the general unsecured claims, and $415,806 as the estimated amount required to settle the claims not entitled to priority, both amounts being applicable to the period prior to June 30, 1935. The estimated amount of the claims not entitled to priority was revised, as of September 30, 1937, to $445,162.

By report and order dated April 21, 1939, division 4 authorized the debtor's trustees to issue a promissory note evidencing a loan of $1,184,000 from the Continental Illinois National Bank & Trust Company for the payment of taxes due to the State of Washington. *Chicago, Milwaukee, St. Paul & Pacific R. Co. Trustees' Note*, 230 I. C. C. .....

A summary of the obligations and capital stock of the debtor and the Terre Haute, outstanding on December 31, 1938, (subject to adjustment for payments of back interest) is shown in the appendix hereto. The principal of the total debt amounts to $508,047,413, the annual charges thereon approximately $23,739,279, and the total debt, including unpaid interest, aggregated $626,926,331. Taking the no-par common stock at $100 a share the total capitalization is $744,760,713.

The debtor has no free assets of substantial value which are not pledged under mortgages or as collateral security for loans, except the stock of the Milwaukee Land Company and its note, the stock having been released from pledge with the Railroad Credit Corporation. Of the stocks of affiliated carriers owned, aggregating $8,630,801, par value, $7,842,954 in par value was pledged as of April 30, 1937, and all the bonds of affiliated companies owned were also pledged. The stocks of jointly-owned carrier companies, held by the debtor and all pledged, include those of the Chicago Union Station Company, the Des Moines Union Railway Company, the Kansas City Terminal Railway Company, the Minneapolis Eastern Railway Company, the

Minnesota Transfer Railway Company, the St. Paul Union Depot Company, the Davenport, Rock Island & Northwestern Railway Company, and the Indiana Harbor Belt Railroad Company.

The debtor has assumed liability, jointly with other companies, in respect of the principal and interest of $69,100,000 of bonds issued by the Chicago Union Station Company, $9,225,000 of bonds issued by the Indiana Harbor Belt, and $2,036,000 of bonds issued by the Minnesota Transfer. The agreements relating to the guaranty of $49,569,000 of Kansas City Terminal bonds and $14,945,000 of St. Paul Union Depot bonds, entered into by the old Milwaukee, were not expressly assumed by the debtor, although such agreements were not disaffirmed in the former reorganization and the debtor has continued to make the payments under such agreements.

The debtor owns the entire capital stock of the Republic Coal Company, Continental Telegraph Company, Excelsior Coal Company, and Milwaukee Land Company. The Republic Coal Company reports an original investment of $1,121,447, and net income during the five years 1932-36 ranging between $17,548 and $34,120. The Continental Telegraph is a small company which operated at a loss during the period mentioned. The Excelsior Coal is another small company, operating at a profit in some years. The Milwaukee Land Company, as of April 30, 1937, reported capital assets of $9,021,896 and total assets of $9,379,408, compared with total liabilities of $13,890,760, excluding a profit and loss debit balance of $4,511,352. It was indebted to the debtor on a demand note for $9,524,363 and owed $3,504,456 in interest on all notes and advances. The company's income accounts show a net deficit in each of the five years, 1932-36, the largest being $1,053,696 in 1934, and the smallest being $311,956 in 1936.

As of April 30, 1937, the debtor's advances to the Chicago Union Station Company amounted to $3,207,249, and the total amount advanced to all affiliated companies, excluding the Milwaukee Land Company, was $5,393,647.

Traffic; Earnings.

By orders of division 4, there were filed in the record a report on the debtor's freight traffic and a report on its railway operating revenues other than freight, both prepared by the Bureau of Finance accountants. The first-mentioned report analyzes the debtor's freight traffic and the earnings therefrom during the period from 1921 to 1935, inclusive, and contains studies of the principal freight commodity groups, with data regarding trade and other conditions affecting the traffic. The following summary shows the distribution of the traffic by commodity groups in representative period.

AVERAGE ANNUAL TONNAGE

	1921-27	1928-30	1931-34	1935	1936
Products of agriculture	7,251,900	7,244,400	5,262,600	4,945,400	5,397,411
Animals and products	2,467,309	2,500,900	2,080,800	1,502,200	1,837,068
Products of mines	16,536,500	18,035,700	10,348,000	10,184,700	12,797,624
Products of forests	9,071,600	6,932,900	2,330,200	3,568,700	4,602,752
Manufact. and misc.	8,932,600	12,370,900	7,373,800	8,890,100	10,954,281
Less than carload	1,743,000	1,423,500	731,500	591,900	646,686
Grand total tons	46,063,000	48,508,500	28,126,460	29,682,900	36,233,222

The debtor's total freight revenues and total railway operating revenues since 1927 were shown as follows in the reports of the company or its trustees to the stockholders:

	Freight	Total
1927	$127,804,440	$162,942,819
1928	136,226,422	170,554,899
1929	137,176,431	171,361,385
1930	115,638,093	142,569,632
1931	91,392,070	111,423,772
1932	70,302,779	84,900,833
1933	71,571,456	85,495,220
1934	73,382,543	87,859,792
1935	77,311,239	92,473,793
1936	91,560,382	109,142,086
1937	88,576,000	107,662,000

Commodities in which the traffic has largely recovered its predepression level include coal and coke, petroleum and its products, meats, flour and grain products, agricultural implements, and manufactures and miscellaneous. Except the last-named group, the traffic in coal and coke contributes the largest amount of revenue of any single class of commodities handled. The groups in which the losses of revenue between 1928-29 and 1936 were most pronounced were forest products, grain, livestock, clay, gravel, sand, stone, cement, brick, ore, and less-than-carload freight.

The trend of the debtor's passenger revenues is indicated by the progressive decline from $26,916,000 in 1921 to $5,617,000 in 1934. Thereafter they increased, reaching $8,286,000 in 1937. All railway operating revenues, other than freight and passenger, remained fairly constant from 1921 to 1929, being $17,432,000 in the latter year. They then diminished to $8,224,000 in 1933, and increased to $10,800,000 in 1937.

At the hearings, the debtor's president outlined the history of the present company's operations, describing the major improvements on the property which had been made, the decline in operating revenues after 1929, and the deficits in net income which resulted. Reductions in salaries were inaugurated on October 1, 1931. On February 1, 1932, a 10-percent wage cut went into effect under an agreement with the Railway Labor Executives Association. Borrowings from the Finance Corporation were begun. In 1933 a further reduction in salaries was imposed and the wage cut was continued under a further agreement with the labor executives. The wage cuts and reductions in salaries less than $400 a month were restored in installments, beginning July 1, 1934, but the other reduced salaries were continued until November 1, 1936, when a partial restoration was made. Total railway operating revenues increased in 1934 over the preceding year by $2,364,572, but a net income deficit of $16,247,621 was incurred, and at the close of the year the accumulated net income deficit, giving effect to the accrual of interest on the adjustment-mortgage bonds, amounted to $56,291,623. The accrual of unpaid interest became a matter of serious concern to the management, which was also confronted with the fact that no bonds could be drawn down under the first and refunding mortgage, in order to reimburse the treasury for capital expenditures, until the deficiencies in

equipment replacements under the covenants of the mortgages executed in connection with the 1928 reorganization had been made good. Under these circumstances there was no available means of financing, even if a substantial restoration of earning power should occur. A surplus of equipment developed, due to the falling off of traffic. As worn-out cars were retired, the deficiencies of equipment under the covenants of the mortgages increased, and these were not satisfied by the purchase of new equipment under equipment trusts. Consideration was given to the matter of a revision of the company's mortgages and capital structure as early as the latter part of 1932, and in August, 1934, a special committee was appointed by the board of directors to study the situation and submit recommendations. Conferences were held with representatives of the Finance Corporation, from which a further loan was obtained. The earnings of the system continuing to be unsatisfactory, the board of directors, on March 25, 1935, caused the officers of the company to prepare a plan to meet the situation. Working with the special committee and with counsel, and conferring with representatives of certain large insurance companies, banks, and other institutions, the company formulated the plan of reorganization hereinafter described.

Between 1934 and 1935, railway operating revenues increased 5.3 per cent but operating expenses increased 9.7 per cent, due largely to the wage restorations and the increased cost of maintenance. In 1935 the net railway operating income was $4,723,983, and the net income deficit $8,865,064, before interest on the adjustment-mortgage bonds. The total revenues of 1936 were $109,142,086, or 18.1 per cent in excess of those in 1935, while operating expenses increased by 11.6 per cent. The net income deficit in 1936 was $4,052,424, before interest on the adjustment-mortgage bonds. Tax accruals increased from $5,992,000 in 1935 to $8,135,000 in 1936. In 1937, with revenues and operating expenses slightly greater than in 1936, the net income deficit increased to $5,077,586, before interest on the adjustment-mortgage bonds. The amount of funded debt outstanding was increased in 1937 by $7,753,000, from the issue of equipment-trust certificates of series P, Q, and R, there being a net increase of $4,507,136. The financing of these issues was accomplished on very favorable terms. Large expenditures were made for air conditioning of cars and many other improvements.

The debtor's president estimated that the effect of the rate increases authorized by us in Ex parte 123 would be an increase of $5,330,621 over the total revenues of 1937, assuming no loss of traffic. Testifying in March, 1938, and assuming that the increase in interstate freight rates would become effective April 1 and in intrastate rates May 1, he presented a tentative estimate of revenues and expenses during the first half of 1938 which indicated a net railway operating income deficit of $482,000, as compared with $4,361,639, net, in the previous year, and a deficit of $30,000 in the income available for fixed charges as compared with $5,027,659 earned in the previous year. The amount of cash on hand on January 31, 1938, was $9,630,265. Even with a substantial curtailment of the maintenance and improvement program it was thought that the cash on hand would be reduced to about $3,400,000 by the end of June, 1938. The president stated that such amount was about the minimum with which operation could be conducted.

The testimony shows the various measures taken by the company since 1928 to improve the efficiency of operation and the satisfactory results obtained with respect to the cost of repairs to freight cars, locomotive performance, the use of treated ties, the installation of the tie plates, the method used for lengthening the life of rails, permanent improvements on bridges, and the maintenance of track and bridges. Between 1928 and 1935 the number of personal injuries on the system was greatly reduced. The unit cost of conducting transportation was materially less than during the period between 1921 and 1927. Several locomotive repair shops were discontinued. The number of operating divisions was reduced from 28 in 1927 to 15 in 1935. New contracts for the purchase of electric power were negotiated in 1929, resulting in substantial savings. Savings were also made in the cost of accounting. The matter of the abandonment of unprofitable branch lines already has been mentioned.

The debtor's president asserted at the 1935 hearing that there was no deferred maintenance on the property requiring additional expenditures. At the hearing in March, 1938, he testified that the condition of the roadway, structures, and equipment was excellent, and as good as at the beginning of the depression in 1930. The debtor's improvement budgets for the years 1935, 1936, and 1937, were approved by the court.

In the brief filed in behalf of the debtor, the earnings of the system in each year from 1910 to 1937, inclusive, were stated. The earnings since 1921 are shown below.

Income Available for Payment of Interest.

	As Reported by Carrier	As Modified by Committee
1921	$ 7,985,488	$ 8,801,859
1922	13,222,720	14,506,448
1923	20,379,860	23,339,726
1924	18,992,891	20,398,452
1925	16,846,185	19,126,107
1926	18,369,990	21,128,190
1927	14,189,866	17,805,810
1928	30,671,632	32,885,369
1929	29,105,102	31,354,184
1930	17,938,346	20,298,074
1931	9,202,933	11,384,238
1932 Def.	232,590	2,680,530
1933	8,628,145	11,185,699
1934	6,719,954	8,831,558
1935	4,905,940	5,213,501
1936	9,706,089	12,298,916
1937	8,687,380	8,224,809*
1938	4,962,923*	6,023,296*

* Supplied subsequent to the hearings.

The amounts shown as reported by the carrier represent incomes available for fixed charges, less rent for leased roads (largely the rental paid for the Terre Haute), and amortization of discount on funded debt. The amounts stated by the committee represent the adding back of the Terre Haute rental, and with respect to the years 1931 to 1935, inclusive, certain modifications of the charges to depreciation and retirement of equipment, amortization of debt discount, taxes due to the State of Washington, and charges under the Railroad Retirement Act not actually incurred.* It is stated in the debtor's brief that neither the accuracy nor the propriety of these adjustments is questioned.

* The committee considered it improper to include any railroad retirement or social security taxes on a retroactive basis.

The report of our Bureau of Accounts on its accounting investigation of the net income of the carrier, filed in the record pursuant to order of division 4, shows the net income available for payment of interest adjusted (a) for accounting not in conformity with the accounting regulations, (b) to include income items entered in profit and loss with our permission, and (c) by giving retroactive effect to new legislation and current regulations governing accounting for depreciation of equipment. The resulting amounts of available income are shown as $14,831,336 in 1930, $6,792,857 in 1931, $1,082,596 (deficit) in 1932, $7,602,224 in 1933, and $4,561,786 in 1934. Eliminating the retroactive effect of Social Security and Railroad Retirement taxes the amounts would be $19,391,845, $10,424,895, $1,662,474, $10,089,547, and $6,522.072, respectively.

Under the requirements of the first Railroad Retirement Act, the debtor entered a charge of $746,043 in 1934 and cancelled it by an offsetting credit of the same amount in 1935. The charge made in 1936 in connection with the Railroad Retirement and Social Security Acts was $2,046,131, and that for the first half of 1937 was $1,479,263, partly estimated. The debtor estimated that the payment of taxes in connection with these acts would aggregate $1,135,949* in 1937, $3,020,000* in 1938, $3,488,114 in 1939, $3,769,790 in 1940, and $3,896,721 in 1941, all based on estimates of the amount of the payrolls in those years.

The debtor also furnished an estimate of the amount of the future taxes payable under the Revenue Act of 1936, based on an assumed rising trend of earnings, showing that no income tax or surtax would accrue in 1937 or 1938, that the amount in 1939 would be $225,113, in 1940 $1,103,681, and in 1941 $2,040,997.

The emergency freight charges earned by the debtor under *Ex parte* 103 amounted to $1,712,793 in 1932 and $1,385,919 in 1933. Those under *Ex parte* 115 were approximately $1,591,282 in 1935 and $2,660,528 in 1936.

The amount of the reductions in the salaries and wages paid by the debtor was $4,312,506 in 1932, $4,418,418 in 1933, $4,191,322 in 1934, $853,270 in 1935, and $208,398 in 1936, a total of $13,983,914.

* Revised amounts stated by debtor after close of hearings.

DEBTOR'S PLAN OF 1935.

The treatment of existing obligations proposed in the debtor's plan of July 1, 1935, as modified on August 5, 1935, may be summarized as follows:

Equipment-trust certificates of series A, C, D, E, F, G, H, J, K, and L maturing between April 1, 1935, and December 31, 1940, were to be extended so that they would mature 20 per cent on the present dates of maturity and 20 per cent annually in one, two, three, and four years, respectively, from the present dates. Obligations incurred in connection with the acquisition of equipment which were to be left undisturbed included those under agreements with the American Tank Car Corporation, the Evans Products Company, and the Austin Western Road Machinery Company, equipment-trust certificates of series M and N, and the note given to the Federal Emergency Administration of Public Works (since transferred to the Finance Corporation).

The plan provided for the extension of the debt to the Finance Corporation, for a term of 10 years, with interest at the rate of 4 per cent per annum, without change in the collateral deposited for the existing notes. Additional loans for general corporate purposes, up to a total of $12,000,000, were contemplated, as well as purchases by the Finance Corporation of not exceeding $12,000,000 of equipment obligations. The Finance Corporation conditionally agreed to this plan, but later cancelled its commitment.

The debtor also proposed to extend the notes to the Railroad Credit Corporation, then aggregating $2,974,544, for a period of 10 years, with interest at the rate of 4 per cent per annum, and with certain changes in the collateral pledged.

It was proposed to extend both issues of the Northern's bonds to June 1, 1949, at the present rate of interest, and to modify both Northern mortgages so that defaults which occurred prior to June 30, 1935, should be waived. The chief default under the provisions of the mortgages was in the matter of replacement of equipment. Objection to the proposed treatment of the Northern bonds was made in behalf of certain interveners representing the owners of bonds which had not been extended to June 1, 1939,

under the agreement proposed on March 14, 1934, these interveners contending that the matured bonds should be paid in cash. By an order entered December 3, 1937, the court authorized the debtor's trustees to pay the owners of the unextended bonds the sum of $50 for each $1,000 of bonds, provided the holders agreed to the extension to June 1, 1939.

The plan provided that the maturity date of the first and refunding bonds, all of which are either pledged or held in the treasury, would be extended from June 1, 1943, to June 1, 1958, and the mortgage modified so that all defaults would be waived. The debtor expected that this mortgage would provide a partial means for future financing and that up to $25,000,000 of new bonds could be issued from time to time against the capital surplus resulting from the reduced capitalization proposed.

The $138,788,000 of general-mortgage bonds outstanding would remain undisturbed under the plan, as to lien and maturity, but the payment of one-third of the interest thereon would be made contingent upon earnings for 10 years; such part of the interest being fully cumulative, and provision being made for its becoming fixed if earned during certain consecutive periods. Certain modifications of the mortgage were proposed, including a provision that no dividends should be paid on any class of stock except out of earnings remaining after the application of available net income to purposes that were specified. The debtor had attempted to frame a plan under which total fixed charges would approximate $6,000,000 a year, but it was found that such a plan would mean cutting deeply into the interest on the general-mortgage bonds. A reduction of the rates on the several series of these bonds, so that the rate on any series would not exceed 4 per cent per annum, was not found to be feasible.

The $106,395,096 of 50-year mortgage bonds and the $3,000,000 of Gary bonds outstanding were to remain undisturbed as to lien and maturity and the mortgages were to be modified. The payment of interest on both groups of bonds was to be made contingent upon earnings, but fully cumulative, and if the accumulation should aggregate 10 years' interest then the trustees would have the right to declare the principal amount of the bonds immediately due and payable. As compensation for the sacrifices made by the holders of the 50-year bonds, the debtor proposed that the bonds be made convertible into new preferred stock.

The bondholders insisted on the cumulative interest provision and refused to accept new stock in exchange for their bonds. Certain holders of the Gary bonds contended that the mortgage represents an underlying lien ranking with that of the general mortgage, and that the proposed plan was unjust. The debtor introduced evidence purporting to show the earnings in 1930 and 1931 of the lines subject to the second lien of the 50-year bonds, and in 1933 and 1934 applicable to the Gary bonds, concluding that the proposed treatment of both issues was justified by the lack of earning power shown for the lines involved.

The debtor's plan proposed that the convertible adjustment bonds be exchanged for new preferred stock on the basis of $1,000, par value, of stock for each $1,000 of bonds and accumulated interest thereon. The bondholders asserted that the claim for unpaid interest has priority over the claims of any class of stock. The bondholders, generally, were unwilling to waive their claims for the payment of accumulated interest.

The holders of the debtor's present preferred stock were to receive, for each share, a voting-trust certificate representing one share of common stock having a par value of $25. The holders of the present common stock were to receive, for each share, a voting-trust certificate representing one-third share of new common. The new preferred and common stocks would have equal voting power. As regarded by the debtor, the value of the equity in its present stock was substantial.

The debtor proposed that the Terre Haute lease be not terminated if the holders of each class of Terre Haute bonds would become bound by certain modifications of the lease, including the waiving of all defaults, and by a proposed agreement not to take any action against the lessor or the lessee in respect of any default under the lease or any of the mortgages, which might have occurred prior to June 30, 1935. The equipment vacancies under the lease have been stated. The debtor conceded that the Terre Haute earns more than the interest requirements of its bonds, that a reduction of the rental would not be justified, and that a cancellation of the lease would injure all concerned. Studies of the earnings of the Terre Haute in 1925, 1926, 1933, and 1934 indicated that the leased property enable the debtor to get its coal at a low cost for transportation and was of value to it in other respects.

The plan provided for the maintenance of a reserve fund, not exceeding $3,000,000 at any one time, and the ascertainment of available net income for 6-months periods, by deducting from income the interest on equipment obligations, loans, divisional bonds, and that part of the interest on the debtor's general-mortgage bonds which would become fixed under the plan. The order in which the payments out of available net income were to be made was as follows: (1) Contingent interest on the general-mortgage bonds; (2) capital fund, not to exceed $5,000,000 in any calendar year; (3) purchase of maturing equipment obligations; (4) interest on the 50-year mortgage bonds and the Gary bonds; (5) sinking fund for the purchase of either the general-mortgage bonds, the 50-year mortgage bonds, or the Gary bonds; and, (6) dividends or other corporate purposes.

Provision was made for a finance committee, consisting of not more than five members of the board of directors, and for the creation of a voting trust for the preferred and common stock, consisting of five members, who were named.

Excluding the proposed new obligations to the Finance Corporation, the total capitalization, including the Terre Haute, as of June 30, 1935, would have been reduced by the plan from $775,459,677 to $590,597,732, the fixed interest charges from $14,457,933 to $7,146,829, and the contingent interest charges from $9,143,685 to $7,453,840 per annum.

The plan was approved by the board of directors on June 27, 1935, and was generally acceptable to the institutional group, which, as the conferences progressed, came to be represented by a subcommittee of which F. W. Walter, vice president of the Northwestern Mutual Life Insurance Company, was chairman. In June, 1935, the group owned $61,710,600 of securities issued by or assumed by the debtor, and represented an additional $11,635,600 of securities held by an insurance company not formally a member of the group. The largest number of institutions represented in 1935 was 24.

In connection with its plan, the debtor submitted a statement of prospective earnings during the second half of 1935 and for the years 1936, 1937, 1938, 1939, and 1940, showing the manner in which the net railway operating income would be applied if the plan were put into effect on the basis of the earnings assumed. The net railway op-

erating income was computed at $1,668,000 for the second half of 1935, with progressive increases to $16,490,000 for the year 1940. On this basis, payments of contingent interest on the general mortgage bonds would have begun in 1937, appropriations for the capital fund in 1939, and payments of contingent interest on the 50-year mortgage bonds and the Gary bonds in 1940. It appeared that if the freight revenues of 1930 were regained in 1940 the reorganized company would be able to pay all fixed and contingent interest, meet the requirements of the capital fund and sinking fund, and have about $761,000 available for dividends or other corporate purposes. The statement reflected the financing by the Finance Corporation proposed in the plan, and showed that an ample amount of cash on hand would be maintained. At the 1935 hearing the debtor took the position that if the earnings available for fixed charges could not be assumed to be $7,500,000, or more, per annum, no plan of reorganization could be made.

Evidence introduced at the hearing in June, 1937, showed that the actual earnings of the system during the second half of 1935 and the year 1936 exceeded the first estimate, the increase in total railway revenues being $12,425,543, and the increase in the income available for fixed charges being $6,706,640. Although the debtor obtained no further loans from the Finance Corporation, it carried out its program of additions and betterments in 1935-36. A revised statement of future earnings and the proposed annual payments under the original plan was presented, covering the years 1937, 1938, 1939, and 1941. Various changes in the original basis were made, such as the reduction of the proposed new loan from $12,000,000 to $8,000,000, the inclusion of $7,845,000 of new equipment obligations in 1937, and an allowance for undistributed profit taxes and taxes in connection with the Railroad Retirement and Social Security Acts. The debtor's needs for future financing were described at this hearing, and it was stated that between $12,000,000 and $14,500,000 will be required annually for capital expenditures, including principal payments on equipment-trust certificates. It was testified that approximately $9,000,000 of cash will be needed at the beginning of each year in order that the amount on hand in July will be adequate after the payments of interest due during the first half of the year. Negotiations for a loan of $8,000,000 from the Finance Corporation had not been undertaken, but the debtor still considered it desirable, if

not necessary, to predicate the reorganization on new financing by the Finance Corporation, especially as it was now clear that additional issues of the first and refunding mortgage bonds would not be salable. The debtor's general-mortgage bonds were then selling at about 60.

Also at the hearing held in June, 1937, the debtor presented a report by a special committee of its directors which pointed out the uncertainties as to general business conditions, wages, prices, rates, etc., then existing, and stated that it was unable to recommend either a modification of the 1935 plan or a new plan. An adjournment of the hearing for a period of six months was recommended. Counsel for the institutional investors' group stated that the group approved the 1935 plan, assuming that it could be adopted promptly, but would acquiesce in a postponement of the hearing for a period of six months. One member of the special committee testified that new negotiations with the large security holders would be necessary, requiring much time, and the difficulties of formulating a new plan were very great. Two major defects in the 1935 plan were recognized, viz., the inadequacy of its provisions for future financing and the cumulative interest feature in connection with the treatment proposed for the 50-year mortgage bonds.

A postponement of the hearing set for September 20, 1937, was requested by the debtor in a petition filed September 13, 1937, wherein the changes in conditions since the date of the debtor's plan were described and it was urged that the making of a new plan should not be attempted. Division 4 entered an order denying this petition. At the hearing the debtor introduced evidence regarding the recent earnings of the system, changes in the amount of debt outstanding, and other matters, but did not undertake to revise further the statement of prospective earnings previously submitted. The debtor's president stated that the uncertainties surrounding several major items of operating cost precluded the making of a new schedule. These uncertainties and the above-mentioned defects in the plan were stressed, objection was made to the adoption of any plan, and an adjournment of the hearing for 120 days was requested by the debtor for the purpose of working out a new plan in collaboration with the committee for the institutional group. The request was denied and the hearing closed.

COMMITTEE'S PLAN.

Upon petition by the institutional investors' group committee, the hearing was reopened by order of division 4 for the purpose of permitting the committee to file a plan. Pursuant to the provisions of that order, the committee tendered a plan on January 10, 1938, and at the further hearing on February 1, 1938, introduced a modified plan dated January 24, 1938, which will be referred to herein as the committee's plan.

The committee, at the time of the February hearing, consisted of 16 members, representing insurance companies and banks, which, as of December 31, 1937, owned $75,310,100 of bonds of the Milwaukee and its affiliated companies, and $13,529,600 of the Milwaukee's equipment obligations, a total of $88,839,700 of securities. The interest of the committee is primarily with the underlying bonds. Despite its approval of the debtor's plan in 1935, it regarded that as a "standby" plan, and later decided that the plan was impracticable. This is now conceded by the debtor.

The committee proposes that the properties of the Terre Haute be consolidated with those of the debtor in connection with the reorganization, but, as an alternative, a continuation of the present lease is suggested, with certain provisions regarding defaults. The $250,000 of first-mortgage bonds of the Bedford Belt Railway Company matured July 1, 1938. On brief (filed May 31, 1938) counsel expressed the opinion that if a default in the payment of these bonds should occur it would facilitate the consolidation of the Terre Haute with the debtor.

The proposed effective date of the plan was July 1, 1938, but it was stated that a later date may be substituted, in which case the basic figures should be adjusted.

In determining the capitalization of the reorganized company, the committee accorded predominant weight to the earning power of the system. The committee states, however, that the cost of reproduction of the property, less depreciation, as well as the original cost, should not be ignored in fixing the new capitalization, that these factors are important in a determination of the rate base, and that account must be taken of the rate base in making any estimate of earnings. The committee contends that, in view

of the fact that the new common stock is to be without par value, an exact determination of the value of the properties is not required, it being necessary merely to find that the value lies between $356,664,671, the total proposed amount of new securities having par value, and $615,397,979, the amount of the debt computed as of June 30, 1938. As of that date, the ratio of fixed-interest debt to total capitalization would be about 26 per cent, and the ratio of total debt to total capitalization would be about 43 per cent. F. W. Walker, testifying for the committee, was of the opinion that the ratio of total debt should in no event exceed 60 per cent, and that the amount of fixed-interest debt should correspond to not exceeding one-half the available net income.

The plan shows a reduction in the total debt from $613,163,000, as of June 30, 1938, to $276,198,000, and a reduction in total capitalization from $849,876,000 to $640,687,000, taking the no-par common stock at $100 a share. Total fixed interest charges would be reduced from $14,572,000 to $6,556,000, total contingent charges from $10,283,000 to $8,450,000, and preferred stock dividends from $5,965,000 to $3,911,000 per annum. The foregoing figures do not give effect to the issue of equipment-trust certificates of series S and later series. All equipment-trust obligations are left undisturbed as to lien and interest, but the principal of equipment-trust certificates of series A, C, D, E, F, G, H, J, K, and L would be paid at the rate of 20 per cent of each installment annually, in accordance with the practice followed under orders of the court. Certificates of series M and N, together with trustees' equipment-trust certificates O, P, Q, and R, and any other certificates which may be issued by the trustees before the effective date of the plan, would not be affected by the plan and would be assumed by the reorganized company.

Under this plan the loans from the Finance Corporation, all the Terre Haute bonds, and the Northern first-mortgage 4½-per cent bonds are allotted new first-mortgage bonds equal to 100 per cent of the principal obligation plus unpaid interest. All securities pledged with the Finance Corporation would be surrendered for cancellation or for pledging by the new company with the trustees under the new mortgages. An additional $10,000,000 of new first-mortgage bonds is proposed to be issued, and held in the treasury as a reserve for emergencies.

The present Northern consolidated-mortgage bonds and the debtor's general-mortgage bonds are each allotted new first-mortgage bonds in amounts equal to 60 per cent of the claim for principal and interest and new income-mortgage 4½-per cent bonds equal to 40 per cent. In addition, one share of no-par common stock is offered for each $1,000 of claim.

The debtor's 50-year mortgage bonds are allotted new income-mortgage convertible 5-per cent bonds equal to 40 per cent of the claim for principal and interest and new 5-per cent preferred stock equal to 60 per cent, together with one share of no-par common stock for each $1,000 of claim.

The Gary bondholders are offered new 5-per cent preferred stock equal in par value to the amount of the principal amount of bonds and unpaid interest.

The holders of the debtor's adjustment-mortgage bonds are offered one share of no-par common stock for each $100 of claim for principal and interest.

All unsecured claims, not entitled to preference, and all valid obligations of the debtor for which no specific provision is made in the plan, would be allotted one share of common stock for each $500 of claims.

The committee believed that the debt to the Railroad Credit Corporation would be liquidated before the effective date of the plan but provided that, if not so liquidated, such debt would be paid or assumed by the new company.

Claims not affected by the plan, which would be assumed or paid by the reorganized company, include all lease agreements not disaffirmed, current liabilities of the debtor incurred in the conduct of business prior to the institution of this proceeding which are entitled to priority over any mortgage bonds of the debtor, and liabilities of the debtor under terminal company guaranties not disaffirmed by the reorganized company.

The committee made an analysis of the debtor's earnings, modifying the debtor's income accounts, as has been explained, by adding back the rental payments (bond interest) under the Terre Haute lease, and by certain other adjustments. From a computation of the averages thus found to be available for interest in various groups of years during the period 1930 to 1936, the committee deemed that the average of $7,859,106 for the five year period 1931

to 1935 would be a minimum for future years. For a future normal year, the committee adjusted the debtor's forecast for 1939, arriving at total gross revenues of $126,900,000 and an income of $15,894,000 available for the payment of interest, before Federal taxes. The fixed-interest charges under this plan would be covered about 1.2 times by the future minimum earnings of the system and 2.4 times by the future normal earnings, as estimated by the committee. If, from the assumed future normal income be deducted the proposed fixed-interest charges and the estimated payment of $2,538,000 to an additions and betterments fund, the remainder, approximately $6,716,000, would be available each year for contingent interest, sinking-fund payments, and dividends. Approximately $5,346,000 would be required for the payment of interest on the proposed series-A and series-B income bonds, and $566,000 for the sinking funds, leaving $804,000 for dividends on the new preferred stock.

The committee proposes that $132,414,000 of series-A first-mortgage bonds be issued in the reorganization, exclusive of the $10,000,000 of bonds to be made available for emergencies. These first-mortgage bonds would have a term of 30 years, and would bear interest semiannually at the rate of 4 percent per annum. Other first-mortgage bonds would be issuable in series for (1) net additions and betterments and the acquisition of property (except equipment), after reorganization, to the extent of 75 percent of the cost thereof, (2) the acquisition of new equipment to the extent of 75 percent of the net cost thereof, provided the term of the bonds shall not exceed either 15 years or the estimated life of the equipment, and provided a sinking fund is created in order to retire these bonds within their terms, (3) the acquisition of lines of railroad, or securities of companies owning lines of railroad connecting with the debtor's lines, provided the amount of new bonds so issued, together with existing liens and indebtedness on the property being acquired shall not exceed 75 percent of the net cost thereof, (4) the refunding of mortgage obligations which are on a parity with the new first-mortgage bonds, and (5) future consolidations or mergers. In the event of an involuntary consolidation the 75-percent limit would not be applicable. The issue of additional bonds for the purposes described under (1), (2), and (3) above, would be allowable only in the event the

system income available for the payment of interest shall amount to 1½ times fixed charges during any period of 12 consecutive calendar months out of 18 calendar months immediately preceding the month in which application is made for authority to issue such bonds.

The committee's plan provides for a reserve and retirement fund and an additions and betterments fund, to be segregated and used only for specific purposes. Payments into the first-named fund would be made annually in amounts equal to the charges to depreciation of equipment, the minimum charge being $5,500,000 a year, so long as any first-mortgage series-A bonds shall be outstanding. Funds so derived, together with such amounts as may be received from the additions and betterments fund, would be used for specified purposes, the first of which would be the payment of the principal of equipment-trust obligations and the second the payment of not less than 25 percent of the cost of new equipment if purchased under equipment trusts or by the issue of bonds. It is provided that any amount remaining in the reserve and retirement fund in excess of $5,000,000 would be available for additions and betterments under prescribed conditions.

Payments into the additions and betterments fund would be made annually on the basis of 2 percent of railway operating revenues, or $2,500,000 a year, whichever is larger, such payments to be contingent on earnings and noncumulative, after all fixed charges and payments to any sinking funds which may be created for the retirement of fixed-interest bonds. This fund would be used to provide for, or reimburse the reorganized company for, "improvements and betterments" which are not to be used as a basis for the issue of securities, or it may be applied to 25 percent of the cost of improvements and betterments which are to be funded into bonds for the remaining 75 percent before the end of the calendar year next succeeding the date of acquisition of such additions and betterments. Any moneys remaining in this fund, after payment or appropriations for the foregoing purposes, would be transferred to the reserve and retirement fund and used in accordance with the provisions for that fund.

In the opinion of the committee, no new money will be required in the reorganization, and the funds described above would provide for all the ordinary needs of the new

company. Reference is made to the testimony indicating that there is no deferred maintenance on the property. In any event, the plan provides for the $10,000,000 of first-mortgage bonds for emergency use.

It is proposed to issue $63,439,000 of series-A and $49,828,000 of series-B income bonds in exchange for present securities, and additional series would be issuable later under prescribed conditions. The series-A bonds would have a term of 50 years and bear interest at the rate of 4½ percent per annum, payable annually, contingent upon earnings, and cumulative up to a total of 13½ percent, whether for consecutive or nonconsecutive income periods. Interest, and accumulations thereof, on the series-A bonds would be paid before any interest is paid on the series-B bonds. The proposed series-B income bonds differ from the series-A bonds in that their term would be 60 years, the contingent interest rate would be 5 percent per annum, cumulative up to a maximum of 15 percent, and they would be convertible into common stock, at the option of the holder, on the basis of 15 shares of stock for each $1,000 of bonds, with appropriate provisions for the adjustment of interest and dividends.

The plan provides for a sinking fund for all series of general mortgage income bonds, the fund for series-A and series-B to be created by the annual payment to the mortgage trustee of an amount equal to one-half of 1 percent of the aggregate amount of bonds of these series issued in the reorganization. Payments to the sinking fund would be noncumulative and would be made only to the extent of the net income available after provision for the interest requirements on these bonds.

The plan provides that general-mortgage bonds additional to those of series-A and series-B, may be issued, subject to our approval, for the same general purposes as those specified for additional issues of the new first-mortgage bonds, to the extent that bonds of the latter kind shall not have been issued for the same purposes, provided that there are no accumulations of interest on the general-mortgage bonds and that the full interest on such bonds for the two preceding calendar years shall have been paid. The bonds issued in additional series would have such position with regard to priority of call upon available net income as the board of directors of the new company might determine, but in no event would any

additional issues have priority over series A as to the payment of interest. The board of directors would prescribe the conditions of these additional series with respect to interest rates, denominations, redemption conversion, etc.

The authorized amount of the new preferred stock would be unlimited, subject to the laws of the State or States in which the reorganized company is incorporated. Series-A preferred stock, in the par amount of $78,231,000, would be issued in the reorganization. This stock, having a par value of $100 a share, would be entitled to dividends at the rate of 5 percent per annum, as declared by the board of directors, such dividends to be noncumulative, but no dividends on the common stock would be permitted unless and until provision shall have been made for the payment of 5-percent dividends on the new preferred stock of series-A for each of the three consecutive income periods immediately preceding the date of payment on the common stock. After dividends have been paid, declared, or funds set aside for payment, on the common stock at the rate of $3.50 a share in respect of any income period, each share of the new preferred stock of series A would be entitled to participate equally with each share of new common stock in any additional dividends to the extent of $1 a share in any such income period. In the event of a dissolution of the reorganized company, the holders of the preferred stock would be entitled to receive the par value thereof together with all dividends declared but not paid before any distribution of assets would be made to the holders of any other class of stock. The new preferred stock would be redeemable at the option of the reorganized company, in whole or in part, at 105 and unpaid dividends. The owners of series-A preferred stock would be entitled to one vote for each share. Provision is made for the issue of series other than series A, but not having priority over series A, with such limitations and provisions with respect to dividend rates, redemption, conversion, etc., as may be prescribed by the board of directors. So long as any series A stock remains outstanding, the consent of the holders of at least a majority of such stock would be required for the authorization of any additional series of preferred stock ranking on a parity with series A.

The proposed common stock would be unlimited in authorized amount, subject to State laws, and would be with-

out par value. It would be entitled to one vote for each share. In addition to the proposed initial issue of 2,862,577 shares, approximately 890 shares would be issuable for the settlement of general unsecured claims, and 747,420 shares would be issuable for the conversion of the general-mortgage series-B bonds. The holders of the present preferred stock and common stock are not afforded any participation in this plan. Counsel for the committee state that the laws of Wisconsin, under which the present debtor was incorporated, permit the issue of no-par stock, and that the sale of stock having a par value, at a price less than such value, would be illegal. In view of this situation, counsel are of the opinion that new common stock having a par value would restrict the use of such stock for the purposes of future financing.

The plan provides that the available net income of the new company shall be determined for each calendar year as promptly as possible after the termination thereof, and if the company shall fail to earn its fixed charges in any income period, the deficit shall be added to the fixed charges in the next succeeding income period. As so determined the available net income for each income period would be applied to the following purposes in the following order: (1) To the payment of the annual installment for the additions and betterments fund; (2) to the payment, on April 1, of the contingent interest on the series-A income bonds, and any accumulations thereof; (3) to the payment, on April 1, of the contingent interest on the series-B income bonds; (4) to the payment, on April 1, of the contingent interest on any other series of income bonds which may be issued subsequently; (5) to the payment to the trustee under the general mortgage, for account of the sinking fund for the income mortgage bonds, of amounts up to one-half of 1 percent of the aggregate principal amount of the series-A and series-B bonds outstanding; and (6) to the payment of dividends, as the board of directors may determine, on the several classes of stock outstanding, in the order of their priority, or for general corporate purposes.

The plan provides for a new board of directors consisting of not less than 7 nor more than 15 members, and for the creation of a voting trust consisting of five trustees, two of whom would be designated by the committee, two by the holders of the new preferred stock and common

stock, and one by the Finance Corporation. It appears that, in practice, the committee would designate a majority of these trustees. The voting trust would continue for 10 years, or until dividends on the new preferred stock shall have been paid in full for three consecutive periods of 12 months. Walker defended the proposed voting trust on the ground that the stock of the reorganized company would probably have a low initial market value, and, if not protected by a voting trust, might fall into the hands of investors or speculators who would not have any permanent interest in the property. He also thinks that a voting trust is necessary in order to safeguard the interest of the present senior creditors who will receive little or no new voting stock.

The plan also provides for reorganization managers, to receive compensation as may be determined in accordance with the provisions of section 77, as amended, and to consist of not more than three members, two to be designated by the committee and one by the Finance Corporation, or, if not designated by the latter, then by the court.

Provision for dissenting creditors is made in the plan by the requirement that if the holders of more than one-third in principal amount of any class of creditors shall not accept the plan, the property of the debtor may be sold at public auction, at a fair upset price determined by the court, and the nonassenting creditors of such class shall be entitled to receive their aliquot portion of the proceeds of the sale, after deducting therefrom all expenses of the sale and the amount which would be required to pay, in full, principal and interest to the date of the sale, all creditors whose claims are prior in lien or superior in equity to the claims of such non-assenting creditors. Upon any such sale, the property may be purchased for the benefit of the reorganized company by the reorganization managers or their nominee, and, if so purchased, there may be applied on account of the purchase price the distributive share of the proceeds of the sale of all securities of the debtor, the holders of which shall have assented to the plan, and of the securities though not assenting to the plan, of all classes of which two-thirds in amount of those voting shall have accepted the plan. Counsel for the committee insist that the foregoing provision is consistent with section 77(b)(5) and is supported by the legislative history of the act.

The primary test for the committee's proposed allocation of securities was the debtor's analyses of revenues, expenses, and net income during 1936 for the Terre Haute, the Northern, the Gary, and the lines west subject to the first lien of the debtor's first and refunding mortgage and the second lien of the 50-year mortgage. The total system earnings, less the aggregate earnings of these portions of the system, as calculated by the debtor, were assumed to represent the earnings of the lines east, which are, in general, subject to the first lien of the general mortgage. Extensive testimony was taken in connection with this matter, and representatives of the 50-year mortgage bonds, in particular, raised objections to the methods employed by the committee and the treatment proposed for these bonds. Counsel for the committee insist that the earnings data used are complete and adequate for the purpose.

In support of the proposed consolidation of the Terre Haute's and debtor's properties, the committee points out the virtual ownership of the former which now exists under the 999-year lease, the early maturities of some of the Terre Haute bonds, the equipment vacancies of more than $7,000,000 under the provisions of the mortgages, and the difficulty of abandoning the unprofitable lines of the Terre Haute under the present lease. The committee refers to the showing that, in 1936, the earnings of the Terre Haute on the cost-of-service basis were substantially double the interest charges on its bonds, and also points to the interdependence between the two roads. It is asserted that it would be distinctly to the interest of the Terre Haute to accept the terms offered, despite a reduction of interest rates.

As an alternative to consolidation of the Terre Haute property, the committee suggests that the lease, and the obligations of the lessee thereunder, be modified so that all defaults in the performance of the covenants contained in the lease be waived and the lessee shall not be obligated to remedy any defaults, including failure to replace equipment, which shall have occurred prior to the effective date of the plan, but shall be obligated to replace on or before 10 years from the effective date of the plan vacancies in equipment subject to the mortgages occurring on or after such date. The holders of each class of Terre Haute bonds would be asked to enter into an agreement with the reor-

ganized company not to take, or cause the trustees under the mortgage to take, any action against the lessee or the lessor under the Terre Haute lease in respect of any default under either the lease or any mortgages which may have occurred prior to the effective date of the plan. If the holders of each class of bonds should become bound by the suggested modification of lease and by the new agreement, the reorganized company would not reject or terminate the lease.

In allotting new first-mortgage series-A bonds on the basis of 100 percent of the claims of the holders of the Northern first-mortgage bonds, the committee relied on the earnings of 1936 of that part of the Northern which is subject to the lien of this mortgage. After adjusting the debtor's calculations to show an allocation of revenues and expenses strictly on a system basis, the committee concluded that the line in question earned three times its interest charges. According to the debtor's calculations the interest was earned about 4.3 times.

The allotment of new first-mortgage series-A bonds, in amounts equal to the claims of the Finance Corporation, the Terre Haute bondholders, and the holders of the Northern first-mortgage bonds, as described above, is based on the committee's belief that these claims are entitled to priority over the general-mortgage bonds. Accordingly, the committee deducted the total amount of these claims from the permissible amount of new first-mortgage bonds previously determined and arrived at $95,158,000 as the balance of new bonds available for distribution to the holders of the debtor's general-mortgage bonds and the Northern consolidated mortgage bonds. Such amount is 60 percent of the amount of the present bonds, with accrued interest, in those two classes. The remaining 40 percent is supplied through new series-A 4½ percent income bonds, and, in addition, one share of new common stock is allotted to each $1,000 of claim, as has been stated. The allotment of stock is said to be in partial compensation for the bondholders' loss of fixed interest and their contribution in the form of a compulsory additions and betterments fund.

The committee proposes that the general-mortgage bonds and the Northern consolidated mortgage bonds be treated on the same basis, because the earnings coverage in 1936 was approximately 1.2 times interest in each case.

The entire amount of new first-mortgage bonds considered permissible by the committee was assigned before reaching the debtor's 50-year mortgage bonds, convertible adjustment bonds, and the Gary first-mortgage bonds. Giving first consideration to the 50-year bonds, the committee allotted all the proposed series-B 5-percent income bonds to this claim, such allotment representing 40 percent of the principal plus accrued interest, and provided for 60 percent by an allotment of new preferred stock, adding one share of new common stock for each $1,000 of claim. If earnings permit the payment of 5 percent per annum on the new income bonds and preferred stock, the present bondholders would receive a return equal to interest at that rate on the total claim for principal and interest. Total fixed and contingent charges, together with the annual payment to the additions and betterments fund, aggregate approximately $12,000,000, ahead of any interest on the proposed series-B income bonds. The available income of the system in 1936, as adjusted by the committee, was $12,298,916.

As has been indicated, the significant feature of the 50-year mortgage is that it represents a second lien on properties subject to the first lien of the first and refunding mortgage, under which no bonds are outstanding in the hands of the public. It has been considered that the latter mortgage represents a first lien on some 2,860 miles of the debtor's line west of the Missouri River, on the Terre Haute leasehold, and on certain other parts of the system east of the Missouri River; viz., the "pieces of lines east". With respect to the latter, the lien is subject to a ruling by the court on the contention of the general mortgage trustee that such lines are subject to the first lien of the general mortgage. The debtor adopts a neutral attitude on this question. There is also a question as to the propriety of treating the earnings of the Terre Haute as free for application to the 50-year bonds unless the lien of the first and refundings is satisfied. These matters will be discussed later.

The evidence upon which the committee relies for its treatment of the 50-year bonds indicates that in the year 1936, the lines west operated at a deficit of $1,108,525, the earnings of the "pieces of lines east" were $170,100, and the income from the securities pledged under the first and refunding mortgage was $402,031. Eliminating the latter

amount as having been absorbed in the treatment accorded the Finance Corporation, the result is a deficit of $938,435. This is compared by the committee with a prospective return of $304,104 a year on the new series-B income bonds (based on the system earnings of 1936), and a yearly expenditure of about $500,000 for additions and betterments on the lines west, from the use of the proposed fund.

The committee allots preferred stock, only, to the holders of the Gary first-mortgage bonds, based on the Gary's lack of earning power and its unimportance to the system. The committee considers that the trackage contract with the Elgin, Joliet & Eastern is burdensome and that substantial portions of the line should be abandoned in the interest of economy.

Debtor's Suggested Modifications of the Committee's Plan.

The debtor introduced a statement at the February, 1938, hearing showing the modifications of the committee's plan which it considered necessary or desirable, including the terms of the new mortgages and other details. A partial revision of the suggested modifications appeared in the debtor's brief and in the exceptions to the proposed report. The debtor emphasized the fact that it did not approve the committee's plan, even as modified; that it did not consider the proposed capitalization sound nor the proposed distribution of new securities fair, especially in the case of the debtor's general-mortgage bonds and 50-year bonds, and the Northern's bonds; that no plan of reorganization could properly be made under the economic uncertainties existing; and that we should refuse to approve any plan.

Subject to the foregoing the debtor suggests the following principal modifications of the committee's plan:

1. The holders of the present preferred stock should be allotted, for each present share, one-third share of new common stock and a warrant for the purchase of two-thirds share of new common on the basis of $25 a share during the first five years, with an ascending scale of prices during subsequent years. The holders of the present common stock should be allotted, for each present

share, a warrant for the purchase of one-half share of new common, on the same price basis. The proceeds of the exercise of the warrants would be used toward retiring the debt of the reorganized company.

The debtor's board of directors recognizes the fact that the present stockholders have no equity in the property on the basis of its present earning power, but on the basis of the section 19a valuation and the reported elements of value, the board believes that an equity exists, at least in the preferred stock. It further believes in the possibility that earnings will increase in the future to the extent that both the common and preferred stock would represent value.

Counsel for the committee presented an analysis of the system earnings in support of their argument that the holders of the preferred stock have no equity. Counsel for the Finance Corporation agreed in that view.

2. The approved plan should provide for a consolidation of the Terre Haute properties with those of the debtor, refunding the former's bonds with new bonds of the reorganized debtor, as proposed by the committee. In the alternative, the Terre Haute should be reorganized, and the new securities issued to the debtor representing its interests or equity in the Terre Haute pledged under the reorganized debtor's new mortgages. This alternative treatment differs from that proposed by the committee in that the latter provides for a continuation of the present lease and of the debtor's obligations with respect to payment of principal and interest of the Terre Haute bonds.

Counsel for the debtor, on brief, discussed the difficulty of devising a plan which will be equitable with respect to the Terre Haute bondholders, without doing injustice to the senior creditors of the debtor.

3. The settlement of the secured claims against the debtor should be limited to a realization of the principal and interest of the debt, and, accordingly, the committee's provision for the allotment of common stock to the holders of certain bonds, in addition to the allotment of senior securities equal in face value to 100 percent of the debt, should be eliminated.

4. The effective date of the plan should be January 1, 1939, and the accumulation of interest is restated as of that date.

5. The amount of the debtor's working capital at the time of reorganization will be inadequate, and the plan should, therefore, provide for new money by the immediate sale of not more than $10,000,000 of new first-mortgage bonds. The debtor showed how the payment of interest charges, under orders of the court, has declined since 1936, and the large depletion of cash on hand which accrued between January 1 and June 30, 1938. It also showed that in 1936 and 1937, when substantial amounts of equipment-trust maturities were deferred the gross charges to additions and betterments of road and equipment greatly exceeded the total of the charges to depreciation of equipment, roadway retirement charges, and salvage recovered.

The debtor insists that the committee has failed to provide sufficient working capital for the reorganized company, and with respect to future financing, has provided an inadequate additions and betterments fund, as well as an impracticable method of financing by additional issues of first-mortgage bonds. It suggests that out of the $10,000,000 of new cash to be provided; $5,000,000 should be set aside at once for the additions and betterments fund.

6. The committee's proposal to prohibit the issue of additional first-mortgage bonds unless fixed charges shall have been earned 1½ times during 12 consecutive months, should be eliminated, and the plan should provide, instead, that the fixed-interest funded debt of the reorganized company be limited to 35 percent of total capitalization, and the total fixed-interest and contingent-interest debt to 55 percent of total capitalization,* computing the common stock issued in the reorganization at $100 a share.

7. The plan should prohibit the issue of additional first-mortgage bonds at times when financing might be done by the issue of income bonds at a cost of less than 5 percent per annum, or with stock at a cost of less than 6 percent per annum, provided that the common stock be not issued at a price less than $50 a share. It is further suggested that income bonds should not be issued if the financing could be effected with new stock, on the foregoing basis.

Counsel state that the governing percentages suggested

* In its exceptions to the proposed report the debtor suggests that the new first mortgage provide for a sinking fund for the retirement of first mortgage bonds when these percentages are exceeded. This suggestion is hereinafter discussed.

in Nos. 6 and 7, above, are tentative and that a further study of the proposal, which is along new lines, might indicate other percentages to be desirable, and that the matter should not be left to the new management. It is thought by counsel that the committee's limitation on new bond issues would prevent the use of fixed interest obligations during periods of low earnings, while at times of high earnings the tendency would be to raise money at low cost and to increase the ratio of fixed-interest debt unduly. Counsel contend that it would be futile to reorganize a railroad on the basis of a conservative debt ratio and then permit the piling up of new debt. The debtor's proposal is intended to maintain a conservative debt ratio and to force the use of income bonds and stock for financing during periods of prosperity, while restricting the use of fixed-interest bonds (free from the 1½-times coverage requirement) to periods of low earnings.

8. The amount of new first-mortgage or income-mortgage bonds which may be issued for pledge should be limited in principal amount to 150 percent of the amount of the obligation for which the pledge is made.

9. The amount in the additions and betterments fund should be maintained at a minimum of $5,000,000, the mandatory payment to the fund should be $2,500,000 per annum, and the additional payment should be an amount sufficient to bring the total up to $5,000,000, or 4 percent of total revenues. The second payment should be at the discretion of the board of directors. In support of the total requirement of $5,000,000, the debtor presented a statement showing the annual charges to additions and betterments each year from 1928 to 1937, together with a statement of the cash obtained each year from equipment depreciation charges, road retirements, and salvage, and a reference to the debtor's testimony showing the future needs of the system. Counsel for the committee believe that an annual payment of $2,500,000 to the fund is adequate and that the additional payment of $2,500,000 would react unfavorably on future issues of income bonds.

While insisting that the additions and betterments fund should be in the amount stated, the debtor recognizes the fact that, with total fixed charges of about $6,556,000, only half the required amount would have been earned for the fund in the years 1932, 1934, 1935, 1937, and 1938. Nevertheless, the debtor prefers a plan providing for a

$5,000,000 fund, rather than for a $2,500,000 fund and the financing of the remaining $2,500,000 by a bond issue.

10. The term of the first-mortgage bonds should be 50 years, that of the series-A general-mortgage bonds 65 years, and that of the series-B general-mortgage bonds 75 years, instead of 30 years, 50 years, and 60 years, respectively, as proposed in the committee's plan.

11. Instead of a voting trust, the plan should provide for the election of directors by the new stockholders, directly, with provisions to safeguard the prior equitable right of control by the new preferred stockholders. The debtor points out that the new preferred stock will be allotted largely to the holders of bonds which were issued in the 1928 reorganization, and it contends that the right of control of the reorganized company equitably belongs, first, to the holders of the new preferred stock, and, after a continuous return on the preferred stock shall have been demonstrated to the stockholders generally.

12. The reorganization should be carried out under the supervision of a reorganization committee, the members of which should be chosen by all the creditors affected.

13. Additional bonds should be issuable for financing legitimate capital expenditures, without the detailed specification of expenditures proposed by the committee.

In this connection, counsel suggest that we should modify our practice of basing the authorization of new security issues on the cost of additions to property, less retirements, when, in the case of a reorganized railroad company, the capitalization has been drastically reduced. It is pointed out that the gross expenditures incurred in connection with future consolidations or coordinations should not be considered to be offset in any degree by subsequent abandonments of line. Some modification of our accounting rules is suggested to the end that the issue of new securities shall not be restricted by retirement charges occurring within, say, two years of the consummation of the reorganization.

14. The restrictions on the use of the reserve and retirement fund, as proposed by the committee, should be altered. The debtor considers that the proposed earmarking of expenditures to be made from this fund may prove to be unworkable in practice and suggests that the fund should simply be available for whatever amount of capital

expenditures is not financed by new securities, even though that amount be more than 25 per cent of the expenditures. It thinks that the fund should be available for reimbursement of the treasury for past capital expenditures without the necessity for issuing new securities. The debtor also objects to the order of priority of payments from the fund, as prescribed in detail in the committee's plan. Finally, the debtor, recognizing the complicated nature of this fund, suggests that its provisions be worked out in conference between the principal parties.

The debtor proposes to provide for dissenting creditors and stockholders in the following manner. If any class of creditors or stockholders of the debtor affected by the plan shall not accept the plan, in accordance with the provisions of section 77 of the Bankruptcy Act, as amended, within such period as the debtor, with the approval of the reorganization committee and the court, may determine, the property of the debtor, or any part thereof, may be sold at public auction at a fair upset price determined by the court, and the non-assenting creditors of such class or the non-assenting stockholders of such class, as the case may be, shall be entitled to receive their aliquot portion of the proceeds of the sale of such property, after deducting therefrom all expenses of such sale and the amount which would be required to pay in full, principal and interest to the date of such sale, all creditors whose claims are prior in lien or superior in equity to the claims of such non-assenting creditors or the rights of such non-assenting stockholders. Upon any such sale, the property may be purchased for the benefit of the reorganized company by the reorganization committee or its nominee, and, if so purchased, there may be applied on account of the purchase price the distributive share of the proceeds of sale of all securities of the debtor the holders of which shall have assented to the plan, and of the securities, though not assenting to the plan, of all classes which have accepted the plan.

The debtor's suggested modifications are presented in the form of a complete plan, based upon the obligations outstanding on December 31, 1938, with a total proposed capitalization of $670,777,000 (including bonds to be issued for new money, and excluding stock issuable under exercise of warrants), as compared with a total capitalization of $640,687,000 contemplated by the committee. The in-

crease in total debt between June 30 and December 31, 1938, is shown as $8,641,000. Total fixed interest charges amount to approximately $7,000,000 a year under either proposal, but total fixed and contingent interest charges are $17,815,000 under the debtor's and $15,406,000 under the committee's plan.

The debtor appears to accept the committee's initial premise that equipment obligations should remain undisturbed, that the total debt to the Finance Corporation should be refunded in new first-mortgage bonds, and that the total principal amount of the four groups of Terre Haute bonds should be refunded also by new first-mortgage bonds. With distinct reservations, the debtor adopts the percentages used by the committee in assigning new bonds and stock to the general-mortgage bonds, 50-year bonds, and the Northern bonds, new preferred stock to the Gary bonds, and new common stock to the debtor's adjustment-mortgage bonds. With respect to the total allowable amount of new first-mortgage bonds and new income bonds, the debtor makes no determination of its own, leaving these amounts to our judgment, but contends that it would be impossible to work out any allocation of new securities in the event fixed charges were reduced to $5,000,000 a year or less. The debtor considers it doubtful that even as much as $5,000,000 of fixed charges would be justified, and shows that if the interest charges were paid on existing equipment obligations, collateral loans, the Terre Haute bonds, and the $10,000,000 of new bonds, considered to be the minimum amount issuable to provide new money, there would remain only $1,800,000 for the payment of other fixed interest.

On oral argument, counsel for the debtor stated that the earnings studies were not made for the purpose of such a plan as the committee's and are inadequate for a disturbance of existing liens. Counsel appear to agree that the capitalization should be greatly reduced, as recommended in the examiner's proposed report, but insist that adequate studies of earnings are essential to a proper allocation of the new securities. Counsel further insist that after the main features of the plan shall have been decided, we should call in the parties for the purpose of working out the details.

INTERVENER'S VIEWS AND CONTENTIONS.

In their briefs, four interveners opposed the adoption of any plan at that time. The more important reasons given were the uncertainties existing with respect to earnings, rates, wage scales, taxes, etc., the danger that the reorganized company would be unable to meet its fixed charges at the outset, the lack of wisdom in putting the railroads "through the wringer" in times of depression, the unreliable nature of the segregation of earnings upon which the committee's plan is based, and the necessity for a thorough study of possible consolidations with other lines. These interveners, generally, agreed with the debtor that the property was being economically managed and that it should remain in the hands of the court until such time as a reasonably sound estimate of future earnings can be made. Counsel for the debtor, however, seem to have no confidence in estimates of future earnings.

Excepting the qualified approval of the committee's plan indicated in the brief filed by the trustee of the debtor's general mortgage, and the neutral position taken by two other interveners, all the parties objected to the plan presented by the committee.

The trustees of the 50-year mortgage, complaining of the threatened impairment of the lien position of these bonds, assert that no opportunity was given the bondholders to consult with the committee in preparing the plan, that the committee had no data, except those originally furnished by the debtor, to justify a change in the mortgage liens, and that the committee prepared its plan hurriedly, using the only data available. The objection to these underlying data was emphasized in the brief filed in behalf of William Church Osborn, representing a substantial amount of the 50-year bonds and in the oral argument by counsel. The expert employed by this intervener to examine the segregation studies used by the committee testified at the hearing to the effect that the study purporting to show the earnings of the lines west of Mobridge was incomplete and inaccurate. This intervener contends that the committee's plan fails to recognize the equity of the 50-year bonds in the earnings of the Terre Haute, in the value of the physical property subject to the lien of the mortgage, in the contribution by the western lines to the earnings of the eastern lines, and in the effect of future

consolidations on the earning power of the western lines. The intervener takes the position that the first and refunding mortgage bonds outstanding are fully satisfied by the value of the securities pledged under that mortgage, leaving the lines west, the "pieces of lines east," and the Terre Haute leasehold entirely applicable to the first lien of the 50-year mortgage bonds. In connection with other objections to the plan, intervener Osborn states that there could be no default on any series of new income bonds unless and until a default occurs on the new first-mortgage bonds, that the series-B income bonds to be offered to the holders of the 50-year bonds represent no real lien, and that the holders of the debtor's general mortgage bonds would receive new bonds carrying a lien on all the mileage west of Mobridge, as well as on the Terre Haute lines, both of which properties are now, in effect, subject to the first lien of the 50-year bonds.

The trustee of the Northern mortgages contends that the plan is unfair in its treatment of both classes of the Northern's bondholders, and that both issues of bonds should be extended for a period of 10 years, maintaining the present interest rate of 4½ percent, and leaving the mortgages undisturbed. Objection is made to the proposed treatment of the first-mortgage bonds on a parity with the Terre Haute bonds on the ground that the earning power and value of the Terre Haute lines are inferior to those of the Northern. In this connection, it is asserted that the committee gave undue weight to the amount of the equipment vacancies under the Terre Haute mortgages, without giving any weight to the equipment vacancies under the Northern mortgages. The committee's plan provides that the Northern consolidated mortgage bonds be treated on the same basis as the debtor's general-mortgage bonds, on the theory that the earnings coverage in 1936 was the same in each case. The mortgage trustee does not concur in this view and does not accept the computation made of the coverage for the Northern consolidated bonds. Through the testimony of a witness, certain corrections in this computation were suggested, and it was urged that the contribution of the Northern to the earnings of the system be given consideration. The witness's testimony indicated that the Northern might operate effectively in connection with at least three carriers other than the debtor, and also that substantial operating savings might be effected through coordination of facilities.

In the light of the showing with respect to the present and potential value behind the present Northern bonds, the trustee comments on the probable value of the new bonds to be offered in exchange for the Northern bonds under the committee's plan, showing that the earnings coverage in 1936 for both the new first-mortgage bonds and the new income bonds would be much less than that for the Northern bonds, and the testimony of witnesses was cited to show that the new first-mortgage bonds would not be marketable at a price much above 50.

The trustee of the debtor's general mortgage does not oppose the committee's proposed treatment of the general-mortgage bonds but believes that, if the "pieces of lines east" should be found by the court to be subject to the first lien of this mortgage, a more favorable treatment should be accorded. The trustee states that the new series-A income bonds should have priority over the new series-B income bonds in respect of the payment of both principal and interest. The trustee objects to the dilution of the new junior lien by the inclusion of the western lines under such lien, it being thought that the western lines are unprofitable. The trustee further states that if the total allowable amount of new first-mortgage bonds be reduced below that fixed by the committee, the amount of such bonds assigned to the claims of the Finance Corporation, the Terre Haute bondholders, and the Northern bondholders should be scaled down, so that the reduction would not be borne entirely by the general-mortgage bondholders.

The trustees of the debtor's convertible adjustment mortgage take the position that the holders of the adjustment bonds, who are creditors to the extent of 40 percent of the total debt of the system, should not be the only class of bondholders to sacrifice their creditor position. The contention is made that if this sacrifice is required the bondholders should be given control of the new company. Strong objection is made to the proposed voting trust, the members of which would be nominated without any representation by the adjustment-mortgage bondholders. The trustees suggest that the senior creditors be allotted a larger percentage of stock in the new plan. An increase in the total amount of new stock is deemed to be permissible on the basis of the value of the physical properties, and desirable from the standpoint of distribution of future earnings, as well as from that of a future financing me-

dium. The trustees argue, in connection with the recognition of priorities, that section 77 permits the use of a quantative or qualitative treatment, or a combination of both, and that the issue of more stock and less bonds, as compared with the committee's plan, would tend to a sounder reorganization. From the statements made in the trustees' brief it appears that their main objection to the plan is that the prospect of a return on the new common stock assigned to the adjustment-mortgage bondholders appears to be remote.

The trustees of the Gary mortgage consider the committee's plan to be inequitable and financially inadvisable. They object to the value accorded to the Gary, particularly that of the Rockford terminal, contend that the interest on the $3,000,000 of guaranteed first-mortgage bonds has been earned, and object to the proposed assignment of new bonds to the holders of the debtor's general-mortgage bonds and 50-year bonds, when the Gary bondholders are allotted preferred stock. The trustees ask that the plan should either leave the Gary mortgage undistributed, curing all defaults which have occurred, or assign new first-mortgage bonds to the holders of the Gary bonds, or pay the Gary bonds in cash.

The committee representing the debtor's preferred stock considers the committee's plan unfair and not feasible, and that section 77 provides for the composition of all claims and for the retention of ownership by the stockholders. The committee regards it unjust to wipe out the large number of stockholders of this carrier, for the benefit of the creditors, at a time when earnings are low. In any event, the committee believes that an equity exists in the debtor's preferred stock on the basis of the elements of value of the property and its potential earning power. The committee, in its brief, reviewed the testimony of its expert in the matter of a merger of the Milwaukee and Chicago & North Western properties, indicating that large operating savings might be expected from coordinating certain operations and abandoning certain lines. Counsel for the committee argue that such consolidation and coordination of facilities offer the best, if not the only, means of increasing the Milwaukee's earnings. They further argue that section 77 affords the only effective vehicle for consolidations.

The Finance Corporation considers that the institutional group plan is based on the composition theory and that it violates the principle of the Boyd Case. (*Northern Pacific v. Boyd,* 228 U. S. 482.) Insisting that the loans are fully secured, even more adequately secured than are the debtor's general-mortgage bonds, the Finance Corporation regards the offer of new first-mortgage series-A bonds as inadequate and cites the testimony indicating that the new bonds would have a relatively low initial value. The Finance Corporation introduced a large amount of evidence in connection with the value of the collateral held by it. On brief, counsel calculated the amount of new securities at about $26,000,000, which, according to the committee's plan, would be exchangeable for the pledged collateral, using this as a further basis of objection to the offer of new first-mortgage bonds in amount equal to the debtor's total obligation. In satisfaction of its claims, the Finance Corporation demands a cash payment in full, or new securities readily marketable for the full amount, or a repayment of part of the loans, with prior-lien bonds for the balance or a note for the balance backed by adequate securities.

The plan recommended by the examiner, with its large reduction in fixed interest bonds from the amount proposed by the committee, was disapproved by all the parties. Particularly with respect to the kind and allocation of new securities, the examiner's plan appeared to be even less acceptable than the committee's plan. The chief ground of objection was the alleged inadequacy of the earnings data and other evidence to support the recommended distribution of new securities and the disturbance of present lien positions. Counsel for the Terre Haute bondholders' group argued that we have no power to bring the Terre Haute property into the plan. Counsel for the Northern bondholders contended that, on the basis of property value and earnings, the Northern bonds were entitled to remain undisturbed. Counsel for the trustees under the Gary mortgage complained that the Gary bonds were unfairly treated. Modifications of the plan were suggested in behalf of the holders of the adjustment mortgage bonds. Counsel for the Finance Corporation emphasized the value of the collateral pledged and argued for better treatment of the claim. He contended that the Finance Corporation is entitled to the cash, about $1,000,000, held by the trustee

under the first and refunding mortgage. The proposed treatment of the 50-year bonds of 1975 was vigorously opposed by counsel for the bondholders, by the committee, the debtor, and by counsel for the general mortgage bonds.

Discussion and Conclusions.

As hereinafter used, the term "new company" means either the reorganized debtor or a new company created to take over the properties and assets of the debtor.

Treatment of the Terre Haute properties:

As shown by the report of our Bureau of Valuation on the elements of value of the lines of the Milwaukee System, as of December 31, 1935, the cost of reproduction of the Terre Haute property, less depreciation, plus the value of lands and rights, was $20,680,114. The estimated cost of replacing the Terre Haute equipment vacancies under the terms of the mortgages, as of December 31, 1937, aggregated $7,106,149.

The earnings data for the Terre Haute, considered by the committee in preparing its plan, consist primarily of statements for the year 1936, the first of which shows that, as compared with interest requirements of $1,023,580 on the Terre Haute bonds outstanding in the hands of the public, the income of the Terre Haute available for interest amounted to $2,990,126. This reflects an allowance to the Terre Haute of tariff rates on coal and other material hauled for the Milwaukee and charges for per diem on the basis of separate roads, whereas with respect to other accounts the basis is the operation of the Terre Haute as a part of the system. Conforming to the latter basis and computed at cost of service, the Terre Haute's available income for 1936 was shown as $2,040,187. This result was reached by deducting from the former figure the revenue at tariff rates for hauling Milwaukee material, less the estimated cost of handling such material, and by adjustments for the Milwaukee haul of Terre Haute material and the hire of freight cars. After deducting from the revised available income the interest on the Terre Haute bonds and on series E equipment trust certificates, the net income was $875,327.

The record contains statements of the Terre Haute's earnings for certain years previous to 1936. As the re-

sults are not adjusted to the cost-of-service basis, they are comparable with the 1936 statement first mentioned above, showing $2,990,126 as the income available for interest. The corresponding amounts for 1925, 1926, 1933, and 1934 are $3,399,133, $3,916,806, $2,962,012 and $2,826,982, respectively, indicating that the year 1936, utilized by the committee, was not an unusually favorable period. It may be safely concluded that the earning power of the Terre Haute is sufficient to cover all interest requirements, but this earning power is largely dependent on a continuation of the Milwaukee's coal traffic, together with the commercial coal traffic that accompanies it, and would be greatly diminished if such traffic ceased. The present arrangement is distinctly to the advantage of the Terre Haute.

The consolidation of the properties of the Terre Haute with those of the debtor would be consistent with the plan announced in *Consolidation of Railroads*, 159 I. C. C. 522, and from the point of view of corporate simplicity would be desirable. However, as pointed out by the group of owners of certain Terre Haute first and refunding mortgage bonds who were permitted to intervene specially, the Terre Haute is not a debtor in any section 77 proceeding now before us. Although the Terre Haute bondholders were recognized as creditors of the debtor by the court's order of July 6, 1935, which divided them into four classes, this group did not appear during the hearings. The trustees under the Terre Haute mortgages have filed claims against the debtor. But the Terre Haute bondholders group argues that we do not have jurisdiction to approve any plan which would disturb the lien of the mortgage securing the bonds owned by the group, and that any plan so providing would not be binding upon them, citing *Greenbaum* v. *Lehrenkrauss Corporation*, 73 F. 2d 285, in which it was held error, under the intercorporate relationships there found to exist, to enjoin proceedings against a subsidiary of a corporation in receivership. To the same general effect is *In re Adolf Gobel, Inc.*, 80 F. 2d 849, also cited, except that the parent company was the debtor in a proceeding under the former 77B of the Bankruptcy Act. This group also raises similar jurisdictional questions as to our authority to approve a plan which would merge or consolidate the Terre Haute with the debtor or which would disaffirm the lease of the Terre Haute to the debtor.

The institutional investors group committee, in addition to representing large holdings of the debtor's bonds, represents about 19 percent of the Terre Haute's outstanding first and refunding bonds and about 23 percent of its income-mortgage bonds. This committee, in support of that part of its plan which provides that the Terre Haute bondholders be given securities of the reorganized company in lieu of their present bonds, argues that in view of the ownership by the debtor of 97 percent of the Terre Haute's capital stock, the existence of the 999-year lease under which the debtor has operated the Terre Haute's properties as part of the system, the assumption of the Terre Haute's bond indebtedness and the guaranty of its income-mortgage bonds, the identity of many of the officers of the respective corporations, and other factors, the debtor's position is essentially that of owner of the Terre Haute, and the position of the Terre Haute is that of an instrumentality of the debtor, with the consequence that the assets of the Terre Haute are part of the assets of the debtor for purposes of reorganization. In support of its position the committee cites *Central Republic Bank & Trust Co.* v. *Caldwell*, 58 F. 2d; *In re McCrory Stores Corp.*, 69 F. 2d 517; *Commerce Trust Co.* v. *Woodbury*, 77 F. 2d 478, cert. den. 296 U. S. 614; and *In re Hotel Gibson Co.*, 11 F. Supp. 30.

We have carefully examined these cases and are not persuaded that any of them is of controlling or persuasive importance in the situation here presented. We agree with the group of Terre Haute bondholders that they are not such creditors of the debtor as would be bound as a class by a confirmed plan of reorganization which divested them of their existing liens upon the Terre Haute properties.

The immediate accomplishment of a consolidation of these properties and the elimination of unnecessary corporate structures and intercompany arrangements, very appropriate at this time, is thus thwarted. However, the reorganization of the debtor on a sound basis must not be prevented on that account. Nor must the capital structure of the new company be too heavily weighted by Terre Haute obligations.

Due to the comparatively low income which the system can fairly be depended upon to earn for the payment of interest and for other corporate purposes in the future,

the fixed-interest charges of the system must be reduced to a point that results in a substantial reduction of the principal amount of fixed-interest obligations. Income bonds and securities junior thereto must, to a large extent, replace existing fixed-interest bonds. If the $21,929,000 of Terre Haute bonds may not share in this replacement process and the plan requires their assumption in full, with their existing liens, it would mean that these $21,929,000 of bonds would constitute approximately 27 percent of the total amount of new fixed-interest bonds, exclusive of equipment obligations, which we find should be authorized in the reorganization. As stated, there are also outstanding general mortgage bonds of the debtor, the principal and accrued interest of which amount to approximately $156,000,000. These bonds are secured by a first lien upon approximately 6,000 miles of railway east of Mobridge, which constitute the heart of the system. The cost of reproduction, less depreciation, plus the value of lands and rights, of this so-called heart of the system was approximately $359,000,000, as stated in the report of our Bureau of Valuation, compared with $20,680,114 representing similar elements as to the Terre Haute properties stated in the same report. It is apparent that if adequate recognition be given to the highly-secured claim of the Finance Corporation and to the claim of the Northern on its underlying first-mortgage bonds in the allotment of allowable fixed-interest bonds, the allotment of such fixed-interest bonds to the general mortgage bondholders could not be more than double the amount of the existing Terre Haute bonds, whereas the mileage represented by the general mortgage is about 18 times that of the Terre Haute, and on the basis of the elements of value just described for the lines covered by the general mortgage, about 17 times that of the Terre Haute properties. The problem is succinctly stated by counsel for the debtor in discussing the situation as to the Terre Haute securities in the event we should find that the fixed charges should be substantially less than $6,500,000. He said: "It may be doubted whether the holders of senior liens upon the debtor's own 10,000 miles of property can be expected to consent to an arrangement which contemplates the continuance of the operation of the 10,000 miles, with no substantial return on their invested capital, merely to provide fuel consumption to support the payment of full

fixed interest on the Terre Haute bonds, representing 300 miles."

Under the circumstances, we shall approve as part of the plan, provisions for dealing with the Terre Haute bonds in a manner which bears a fair and equitable relationship to the treatment accorded the bondholders of the debtor, does not require a consolidation of the properties, and yet accords to the Terre Haute bondholders the same security under the existing mortgage, respectively, as their present bonds hold. However, these provisions, in order to become an effective part of the plan, will have to be accepted by substantially all of the Terre Haute bondholders.

These provisions are: The existing mortgages on the Terre Haute properties, including those of the Southern Indiana and the Bedford Belt, shall be so modified by supplemental indentures that the bonds secured by each of said mortgages shall bear fixed interest at the rate of 2.75 percent a year and contingent interest in addition at the rate of 1.5 percent* a year, the payment of the latter being contingent upon the earnings of the new company to the same extent, in the same manner, and with the same limitations, as is provided in the plan with respect to the payment of interest on the general mortgage, series A, income bonds of the new company, as hereinafter described. The supplemental indentures should further provide that (1) the bonds shall mature on the same date as the first-mortgage bonds of the new company mature, (2) the bondholders shall waive all equipment vacancies under the existing mortgages up to the effective date of the plan, (3) the new company may, in the replacement of equipment retired after the effective date of the plan, include equipment purchased under equipment trusts, the lien of the trusts not to exceed 75 percent of the cost of the equipment, and (4) appropriate provisions permitting, subject to our approval, the abandonment of property which the board of directors may deem it to the interests of the system to abandon. The supplemental indenture as to the income mortgage bonds should declare null and void the guaranty of the debtor's predecessor

* These rates result from what, in effect, amounts to a splitting of each bond so that 70 percent thereof will bear a fixed interest of approximately 4 percent a year and the remaining 30 percent thereof will bear interest at the rate of 4½ percent a year contingent upon earnings.

endorsed on the income bonds. A new lease should be made between the Terre Haute and the new company which shall replace the existing lease between the Terre Haute and the debtor. The new lease should provide for the assumption by the new company of the payment of the principal amounts of the mortgage bonds, modified as above provided, and for the payment by the new company of the interest on the modified bonds at the rates and under the conditions specified in the modified bonds, in addition to an amount, not exceeding $12,000 a year, to pay the taxes and corporate expenses of the Terre Haute. The lease should permit, subject to our approval, the abandonment of property which the board of directors may deem to the advantage of the system to abandon, and should contain such provisions as may be deemed appropriate to facilitate a consolidation of the properties of the Terre Haute with those of the new company. The foregoing provisions of the plan, if accepted by substantially all of the Terre Haute bondholders, should become effective approximately as of the consummation of the plan. The reorganization committee, upon confirmation of the plan by the court, should submit the foregoing provisions, with copies of this report and the accompanying order, to all the Terre Haute bondholders and should report to the court the result of such submission.

Should the court determine that the provisions just described relative to the treatment of the Terre Haute bonds and the Terre Haute lease shall not have been accepted by substantially all of the Terre Haute bondholders, then the existing lease between the Terre Haute and the debtor, and the guaranty of the payment of the principal and interest of the Terre Haute income-mortgage bonds, should be rejected, in so far as the plan herein approved is concerned, as of the date of such determination by the court, without prejudice to either the negotiation of a new lease or a consolidation of the properties of the Terre Haute with those of the new company, on terms subject to our approval. In the event the court determines that the described provisions have not been so accepted, appropriate adjustment will be made in the corporate structure of the new company, approved herein, by elimination of the assumption of obligation with respect to the Terre Haute bonds, and such other adjustments as the court may deem necessary to put the plan into effect. Hereinafter we are providing that the plan allot an amount

of stock in the new company which would be available for the payment of claims that may be allowed in the event the above provisions for disaffirmance of the Terre Haute lease and the guaranty of the Terre Haute income-mortgage bonds should become effective as a result of the nonacceptance of the foregoing proposals by substantially all the Terre Haute bondholders.

New Capital Structure.

The effective date of the plan should be January 1, 1939, applicable to the issue of all new securities by the new company, but not to the Terre Haute bonds. As hereinbefore provided, the date of issue of the new or modified Terre Haute bonds should be fixed by the new agreement and by the supplemental Terre Haute indentures, such date to approximate the consummation of the plan.

The obligations and capital stock of the debtor and the bonds of the Terre Haute outstanding on January 1, 1939, in the amounts here considered for the purposes of the plan, are shown in the appendix to this report. In respect of equipment obligations and loans the amounts are different from those used in the plans filed or in the examiner's recommended plan. They will necessarily require further adjustments between the effective date of the plan and the date of consummation, as has been mentioned. The statement of new capitalization and annual charges, shown in the appendix, is, therefore, approximate to the extent of such adjustments.

Under the provisions of section 77(d) we may, after public hearing, approve a plan which may be different from any which has been presented and will, in our opinion, meet with the requirements of subsections (b) and (e), and be compatible with the public interest. The securities to become outstanding in conformity with the capital structure which we approve as meeting the requirements of the act, and the allocations thereof to certain classes of claims, are likewise shown in the appendix.

Considering the past and prospective earnings of the debtor and all other relevant facts, and the public interest, we are of the opinion and find that the total capitalization of the new company should not exceed approximately $108,780,470 of fixed-interest debt, $115,257,480 of contingent-interest debt, $108,675,971, par value, of preferred stock, and 2,158,194 shares of common stock, having no-

par value. Taking the common stock at $100 a share, the approximate maximum capitalization would thus be $548,533,321. Total fixed-interest charges will approximate $4,269,654, and total interest charges $9,489,134 per annum. Including the mandatory payment to the capital fund and a sinking fund for the retirement of bonds, the charges ahead of dividends on the new preferred stock will be about $512,532,528 per annum. Giving effect to full 5 percent dividends on the preferred stock the charges ahead of dividends on the common will be about $17,966,326 per annum.

The committee based its proposed fixed charges on a coverage of 1.2 times the average annual earnings for the five years 1931-35, considered to be a minimum. The annual payment to the additions and bettterments fund was considered, not in connection with the debtor's past earnings but in connection with the estimate for the future normal year, upon which basis the income available for payment of contingent interest was determined after deducting the proposed fixed interest charges and the proposed payment into the additions and betterments fund. A sounder course would be to include the obligatory payment for the fund with the proposed fixed interest charges, keeping the total within the coverage of past average earnings, determined as before. If fixed interest charges be limited to about $4,269,654 and the mandatory payment to the fund to $2,500,000 a year, the total, $6,769,654, would be covered about 1.16 times by the average earnings of the period 1931-35 and 1.18 times for the period 1932-36. In 1932, 1935, and 1938 such an amount was not earned. While 1939 shows an improvement in earning power, we would regard any increase in the foregoing charges as hazardous. Between the clear demands of a conservative policy in the present reorganization and the claims and rights of the first-lien bondholders, we conclude that the limitation of fixed charges of the system at approximately $4,269,654 a year is reasonable and proper. We find that there will be adequate coverage of such amount of fixed charges of the new company by the probable earnings available for the payment thereof.

Counsel for the debtor contend, as has been stated, that if fixed charges were reduced to $5,000,000 a year an unjust impairment of the present position of the

debtor's senior bonds would result, in that only a small portion of the claims of the senior bondholders could be provided for after deducting interest on the equipment obligations, the debt to the Finance Corporation, and the Terre Haute bonds. It is true that the plan will involve sacrifices on the part of the bondholders. But refusal by us to approve any plan until present uncertainties are resolved and the earning power of the system is stabilized would be to delay the reorganization indefinitely. None of the parties has attempted to predict a time or describe the conditions when the making of a plan would be considered proper. This proceeding has been pending for more than four years, and, under any circumstances, cannot be concluded in the immediate future. Further postponement cannot remove the limitations upon allowable fixed charges imposed by the record of past earnings. Advantage should be taken of the progress so far made in the consideration of a plan for this debtor. In our judgment, an endeavor should be made now to devise a plan that will serve as a basis for the company's financial structure for the indefinite future.

The total capitalization of the new company proposed by the committee, if adjusted to the basis of present debt as considered in this report, taking the no-par common stock at $100 a share, and including the $10,000,000 of emergency bonds, would approximate $665,461,921, of which approximately 44 percent would be represented by funded debt. The total capitalization under the plan herein approved will approximate $548,533,321, of which 40.8 percent is represented by funded debt. The charges ahead of dividends are practically the same in both plans, on the basis of a $2,500,000 annual payment to the additions and betterments fund in the committee plan and a $5,000,000 payment in the approved plan. The capitalization under the latter conforms more nearly to the present amount of debt than does the committee's capitalization and thereby more nearly conforms to the committee's announced views. The highest figure arrived at by the committee in capitalizing, at the rate of 4.7 percent, the debtor's average earnings of the past was $520,424,085, this capitalized amount representing an average income of $24,459,932 available for interest during the prosperous 5-year period 1925-29. Capitalized at the same rate of 4.7 percent the average earnings for the 7-year period 1930-36 would correspond to a capi-

talization of $218,518,276 and those for the estimated future normal year to $338,170,213. Even though the common stock is to be of no par value we think that the approved new capitalization, on the basis computed, not exceeding about $548,533,321, is as high as can be reasonably adopted.

With the fixed interest debt of the new company and the Terre Haute at about $108,780,470, determined by the amount of equipment obligations and bank loan outstanding and the amount of new first mortgage bonds found to be allowable, the contingent interest debt should be such that the total debt shall bear a proper relation to the total capitalization, and such as to make the payment of contingent interest a probability and of dividends a reasonable prospect, at least on the preferred stock. The latter requirement is in the interest of the debtor's present bondholders who will receive the preferred stock in part settlement of their claims and also is desirable from the standpoint of future financing by use of preferred stock. Since under this approved plan the charges ahead of the preferred stock amount to approximately $15,000,000, assuming that the payment to the additions and betterments fund is $5,000,000, it appears that earnings must approach those of the future normal year before any dividends can be paid. They would have to exceed those of any year since 1930, even if the payment to the additions and betterments fund were held to the mandatory minimum of $2,500,000. It seems to us clear that an increase in the amount of general mortgage income bonds over the amount herein fixed would be entirely unsound, provided the additions and betterments fund is desirable and necessary, as the parties generally agree.

The following descriptions of the debtor's new mortgages, securities, etc., are, with certain exceptions, those shown in the debtor's modifications of the committee's plan. In adopting these provisions we have given consideration to the differences between the debtor and the committee with respect to the length of term of the new bonds, the form of restriction on the issue of additional bonds, the provisions for new money and for later financing, the additions and betterments fund, the reserve and retirement fund, the necessity for a voting trust, and other matters.

In the committee's plan the term of the new first mortgage bonds to be issued in the reorganization was to be 30 years, thus accelerating by 20 years the maturity of the present general mortgage bonds which would be exchangeable for the new first mortgage bonds in part. We do not consider this short term to be justified as a concession to the present bondholders or otherwise, and approve a term of 50 years for the new first mortgage bonds, as suggested by the debtor. The debtor and the committee agree that if the term of the first mortgage bonds is increased that of the general mortgage income bonds (50 years for series A and 60 years for series B in the committee's plan) should be increased correspondingly. We approve terms of 75 years and 100 years, respectively, for these classes of bonds, in order that maturities shall be at proper intervals.

Under both plans the interest rate on the debtor's new first mortgage bonds is 4 percent. Objection was raised to the 3½-percent rate for these bonds recommended by the examiner on the ground that it would violate the principle of the Boyd case, *supra*, in view of the substantially higher rates paid on the present bonds, and would prove an obstacle to future financing. The plan herein approved provides for an interest rate of 4 percent on the first mortgage bonds issued to present creditors, and for later additional issues provides that the rate, maturity, and other terms be prescribed by the board of directors, subject to our approval. There was testimony to show that, even with an interest rate of 4 percent, the new bonds would probably not be saleable at the time of the hearing in February, 1938, at par or near it.

As has been stated, the committee's plan provides $10,000,000 of new first-mortgage 4-percent bonds to be held in the treasury and issued, for emergency financing, regardless of earnings restrictions, being replaced by new bonds so that $10,000,000 of bonds will always be available for "emergencies". The debtor suggests that at least $5,000,000, but not more than $10,000,000, of first mortgage bonds be issued in the reorganization to provide working capital and additions and betterments, such bonds to mature not earlier than January 1, 1959, to bear interest at not exceeding 5 percent per annum, and to be sold at such price and upon such terms as

may be determined by the reorganization committee and approved by us. It appears from the record that a provision for cash financing in the amount of $5,000,000 would be reasonable in connection with the reorganization. The company's ability to accomplish this financing with bonds limited to a 4-percent interest rate and with a term of 50 years cannot be assumed. We accordingly approve the provisions substantially as suggested by the debtor in this matter. In view of the fact that the mortgage is not closed to further issue of bonds and that a reserve and retirement fund and an additions and betterments fund are elsewhere provided for in the plan, we do not see the necessity for segregating and maintaining a special issue of bonds under the classification of "emergency bonds", as provided in the committee's plan, especially when the conditions constituting an emergency cannot be defined with any degree of exactitude in the plan.

The difference of view between the committee and the debtor with respect to the proper amount to be set aside each year for the additions and betterments fund has been mentioned. It involves not only the method of treating retirements, salvage, and depreciation but also the question of judgment as to the future necessities of the system. It appears that the committee considers that approximately $10,700,000 of cash will be available annually for the additions and betterments fund and the reserve and retirement fund, such amount including retirements, salvage, and depreciation on equipment, while the debtor estimates its average capital requirements for the next five years at about $12,900,000 a year, leaving $2,200,000 or more, which, if the expenditures were not curtailed, would have to be financed by the issue and sale of new securities. Testimony for the debtor tends to support the foregoing estimate of future requirements but in such a matter exactness cannot be expected. We think that the situation will be met by the provisions for the additions and betterments fund hereinafter made, by which the contributions to the fund in respect of any income period will be part mandatory and part in the discretion of the management. The debtor considered, in connection with its 1935 plan, that the allocation of $5,000,000 to this fund annually is the minimum which can be provided without serious risk of crippling the road in the performance of its public obligations.

The reserve and retirement fund, proposed both by the committee and the debtor, is primarily for the payment of equipment obligations and the cost of new equipment, deriving its funds first from the charges to equipment depreciation and incidentally from any excess money in the additions and betterments fund. Both plans provide that the reserve and retirement fund may be used in emergencies to pay interest on the new first mortgage bonds. The plans differ in their detailed provisions regarding the portion of new capital expenditures which may be paid from the fund, the order of priority of payments, etc. We approve the debtor's suggested modifications, which are intended to permit more flexibility in the use of the fund and more discretionary power on the part of management.

In the committee's plan, as has been stated, future issues of first mortgage bonds are not permitted unless the earnings of the new company shall have amounted, during any period of 12 consecutive calendar months out of the 18 preceding calendar months, to 1½ times fixed charges. The debtor's objections to this provision have also been stated. It argues that the provision is inefficient to impel railroad managements to utilize stock issues instead of bond issues for further financing in times of good earnings, and mentions many instances in which railroads have issued bonds instead of stock in times of comparatively good earnings, when their stocks were selling on the basis of a return not in excess of 6 percent per annum. As tending to show that the committee's limitations would unduly restrict further financing in times of low earnings the debtor directs attention to many instances in which railroads under those restrictions could not have issued new fixed interest bonds in recent periods, and to the comparatively few railroads which would have been able to issue such bonds throughout the depression years.

In lieu of the committee's provision the debtor suggested that the new mortgages contain provisions: (a) Limiting total fixed charge debt to 35 percent of total capitalization and total fixed and contingent charge debt to 55 percent of total capitalization, computing no-par stock at $100 a share; (b) prohibiting the issue of fixed charge obligations if at the time of issue the company could finance by the sale of contingent interest bearing

bonds at a price which would give a yield to maturity of 5 percent or less, or by the sale of preferred stock at a price which would give a current dividend return of 6 percent or less, or by the sale of common stock (not less than $50 a share) which would give a current dividend return of 6 percent or less based on the regular dividend rate then in effect, or, if no dividend rate is in effect, on the average rate at which dividends shall have been paid during the last 12 calendar months; and (c) providing that the principal amount of either first mortgage or general mortgage bonds pledged to secure any indebtedness shall never exceed 150 percent of the principal amount of such indebtedness. In its exceptions to the examiner's proposed report the debtor presented a further modification of the first of the foregoing provisions for the issue of new first mortgage bonds to the effect that when the aggregate amount of fixed interest funded debt shall exceed 35 percent of total capitalization, or 55 percent of total capitalization less contingent interest debt, the new company will pay to the mortgage trustee as a sinking fund a sum equal to 50 percent of the available net income of the preceding calendar year remaining after contingent interest and sinking fund payments. Such sinking fund is to be applied to the retirement of first mortgage bonds and the bonds so retired are to be cancelled. This revision is suggested by the debtor in order to eliminate the absolute limitations stated in (a) above, at the same time exerting pressure on the management to avoid exceeding the specified percents. Counsel state that such a provision has been adopted by certain bondholders' committees in other railroad reorganization cases and insist that it is essential to a sound capital structure, whereas the earnings-coverage provision in the committee's plan would produce the opposite result. It is apparently not insisted, however, that the limiting ratios for bonds, 35 percent and 55 percent, nor the rates suggested in (b) in connection with financing by income bonds or stock, are necessarily the correct ones.

For the reasons stated by the debtor we are of the opinion that the suggested earnings coverage restriction should be rejected. We think that the provision for the special sinking fund, as proposed by the debtor, will serve as effectively as is practicable to prevent an undue

expansion of fixed interest debt, and this provision will be included in the plan.

The debtor's suggestion that the principal amount of first mortgage bonds or general mortgage income bonds pledged as collateral security shall never exceed 150 percent of the indebtedness was agreed to in principle by the spokesman for the committee. We approve such a provision as preventing the pledging of bonds at an unduly low price, thus tending to dilute the position of the bonds issued approximately at par.

First Mortgage of the New Company.

The new first mortgage should constitute a first lien, subject only to the lien of equipment obligations, on all property owned by the debtor or its trustees in bankruptcy as such, including securities, equipment, and the equity in such equipment as may be subject to equipment-trust obligations, but excluding equipment or the equity in equipment which may now or hereafter be lodged under the lien of any of the Terre Haute mortgages in accordance with the terms of such mortgages, modified as herein provided. The first mortgage should also have a lien on all similar property acquired by the new company after the reorganization except equipment replacing deficiencies under the Terre Haute mortgages, and except that (a) if the new company shall acquire the properties of any other company (except a subsidiary) then constituting a class 1 carrier as defined by our rules then in force, such properties shall not be subject to the lien of the first mortgage unless hereafter specifically subjected thereto or unless acquired in whole or in part by the use of first mortgage bonds or general mortgage income bonds, or moneys deposited under either of those mortgages, and (b) if the new company shall be consolidated with, or shall be merged into, or shall sell its assets substantially as an entirety to, any other company which at the time is a class 1 carrier as defined as aforesaid, properties then owned or thereafter acquired by such other company shall not be subject to the lien of the first mortgage except properties thereafter acquired which shall be appurtenant or incident to properties subject to the lien of the first mortgage, or which shall be within the maintenance or replacement covenants of the first mortgage, or which shall be acquired in whole or in part by the use of first mortgage bonds or general mort-

gage income bonds or moneys deposited under either of said mortgages.

The new first mortgage bonds should be unlimited in authorized principal amount, subject to mortgage provisions and to such limitations, if any, as may be prescribed by the laws of the State or States in which the new company is incorporated. First mortgage bonds, other than those issued in the reorganization, may be issued from time to time in different series, subject to limitations and restrictions specified in the mortgage, payable on such date or dates, in such denominations, bearing interest at such rates, and containing such provisions in respect to redemption, conversion, taxes, place or places and money or moneys of payment, registration and sinking funds, as may be prescribed by the board of directors of the new company at the time of issue, all subject to our approval.

There should be issued in connection with the settlement of the claims of creditors, as hereinafter described, approximately $53,923,171, principal amount, of series A first-mortgage bonds, to be dated January 1, 1939, and mature January 1, 1989, bearing interest at the rate of 4 percent per annum, payable semiannually July 1 and January 1. Such bonds should be redeemable, as a whole or in part on any interest payment date on 30 days' notice, and at any other time on 60 days' notice, both by publication, at par and accrued interest plus a premium of 5 percent, if redeemed before January 1, 1940, and, if redeemed thereafter, at par and accrued interest plus a premium of 5 percent, decreased by ¼ of 1 percent for each 2 years elapsed after January 1, 1940, until January 1, 1979, and thereafter at par and accrued interest.

In addition to the foregoing bonds to be issued for the settlement of the claims of creditors, there should be issued in the reorganization for the purpose of sale to provide for reorganization expenses, working capital, and necessary additions and betterments, not exceeding $10,000,000, principal amount, of new first mortgage bonds, (or such lesser amount as, with the approval of the reorganization committee may be determined to be necessary) having such maturity not earlier than January 1, 1959, and such rate of interest, not exceeding 5 percent per annum, and such other provisions, and be sold at such price and upon such terms and conditions as may be determined by the reorganization committee and approved by us. The

amount of bonds to be sold in connection with the consummation of the plan, and the application of the proceeds of the sale of such bonds, should be determined by the reorganization committee in its discretion. In the new capital structure shown in the appendix, $5,000,000 of those bonds are tentatively included.

First mortgage bonds, in addition to those issued in the reorganization, should be issuable from time to time to refund outstanding first mortgage bonds or to refund obligations secured by prior liens on after-acquired property, or to provide for or to reimburse the new company for not exceeding 75 percent of expenditures made after December 31, 1938, (including expenditures for new equipment subject to the lien of the first mortgage as a first lien, but not including other expenditures for equipment or for additions and betterments to equipment), which, under our accounting rules at the time in force are properly chargeable to capital account; provided, however, that

(a) Except when bonds are authenticated in respect of new mileage (or securities representative thereof), or in respect of new equipment, such 75 percent shall be applied to the net amount of capital expenditures made after December 31, 1938, after deducting (to such extent and on such basis as may be provided in the first mortgage) credits to capital account after that date.

(b) If any new first mortgage bonds shall be issued for the acquisition of new equipment, a sinking fund should be provided sufficient to retire an equivalent amount of such bonds within a period of either 15 years or the estimated life of the equipment to be acquired (as established by a certificate of an engineer who shall be appointed by the board of directors of the new company and approved by the trustee under the first mortgage, and who may be an officer or employee of the new company), whichever may be the shorter; and

(c) If any property is acquired subject to existing liens the amount of additional first-mortgage bonds issuable therefor, together with the aggregate amount of existing liens to which such property is subject, shall not exceed 75 percent of the net cost thereof, including as part of such cost such existing liens whether or not the indebtedness secured thereby is assumed by the new company;

(d) When the total principal amount of first mortgage

bonds outstanding plus all other funded debt bearing fixed interest shall exceed either (a) 35 percent of the total capitalization of the new company, determined as hereinafter provided, or (b) 55 percent of such total capitalization, less the principal amount of funded debt bearing contingent interest at the time outstanding, the new company will pay to the trustee under the first mortgage as a sinking fund a sum equal to 50 percent of the available net income of the next preceding calendar year that remains after providing for all general mortgage sinking funds and charges prior thereto, as hereinafter described in connection with the application of available net income, or after said provisions shall have ceased to be operative, 50 percent of net income as defined by the accounting rules or practice referred to. Such sinking fund shall be applied to the retirement of first mortgage bonds, by purchase in the open market or by call for tenders or otherwise at not exceeding the redemption price (or in the case of bonds not redeemable, the principal amount and accrued interest) or by payment of matured or maturing bonds or redemption of redeemable bonds; all bonds so acquired shall be cancelled and no bonds may be issued under the first mortgage to refund any such bonds. First mortgage bonds and general mortgage income bonds outstanding shall be deemed to include all bonds authenticated and delivered which shall not have been cancelled or assured of retirement through the deposit of cash. Funded debt shall be deemed to include an amount equal to the capitalized value at 5 percent per annum, of fixed rents payable for leased roads, other than terminal or bridge properties, but shall not include (a) obligations (other than mortgage bonds or equipment trust obligations) maturing not more than two years after their date, or (b) obligations of longer maturity secured by pledge of bonds having a lien on property of the new company except to the extent, if any, by which the principal amount of such obligations exceeds the principal amount of such bonds so pledged. Bonds guaranteed by the new company as to interest or principal or both (other than bonds of a terminal or bridge company) shall be included in funded debt, but, in case of a joint and several guaranty with other corporations, only to the extent of the new company's basic proportion of the principal liability. There shall be included in determining total capitalization only (a) obligations constitut-

ing funded debt, (b) stock having par value, at such par value, and (c) stock without par value, at $100 a share in case of the stock issuable under the plan, and, in case of other stock, at the capital value at which such stock is carried on the books of the new company, not exceeding, however (except to the extent that earned surplus shall have been duly capitalized), the net amount received by the new company on the issue thereof; and

(c) No additional first-mortgage bonds should be sold or pledged unless the board of directors of the new company, by resolution adopted by two-thirds of the entire number of directors, shall have authorized such sale or pledge, and the terms thereof.

The new first mortgage should contain a covenant substantially to the effect that, during each calendar year, commencing January 1, 1939, or on or before March 1 next following the end of such calendar year, there will be paid into a reserve and retirement fund (a) such amounts as may be charged against operating expenses by the new company in respect of such calendar year as we may require for depreciation of equipment, or, if no specific depreciation shall have been required, then a reasonable amount therefor within the maximum permitted by us and (b) such amounts as may be required to be paid into the reserve and retirement fund out of the additions and betterments fund, as hereinafter provided.

The reserve and retirement fund may be used only to provide for or reimburse the new company for expenditures for the following purposes:

(a) Payment of principal of equipment trust obligations and sinking funds on bonds issued against the purchase of equipment; and if at any time the amount then in said fund and estimated to be payable into said fund in respect of the remainder of the then current calendar year shall exceed the principal of such equipment trust obligations and sinking funds required to be provided for out of said fund in respect of the remainder of said calendar year, then, to the extent of such excess;

(b) Payment in cash on account of the cost of new equipment;

(c) Cost of replacement of vacancies in equipment trusts;

(d) Cost of replacement of property retired to the extent chargeable to capital account;

(e) Additions and betterments to equipment chargeable to capital account required to maintain the efficiency of the system unimpaired; and if the amount of the above-mentioned excess of said fund shall at any time be more than $5,000,000, then to the extent of such excess over $5,000,000;

(f) Any other capital expenditure for which first mortgage bonds might be issued.

Should an emergency exist resulting in insufficient earnings from which to meet interest or any sinking fund payments on the first mortgage bonds, or on any other secured obligation the lien of which is not junior to the lien of the first mortgage bonds, the board of directors may, in its discretion, apply any amounts in said fund to the extent necessary to make good the deficiencies, but thereafter no interest upon the general mortgage income bonds or dividends on stock shall be paid until the reserve and retirement fund has been reimbursed for the funds so used.

The reserve and retirement fund should be segregated from the general funds of the new company and held in cash or invested in United States Government securities. If, after the final computation of the amount required to be paid into said fund in respect of any calendar year, and of the amount appropriated or to be appropriated therefrom in respect of expenditures made during such calendar year, the unappropriated balance of said fund, as of the end of said calendar year, shall exceed $5,000,000, such unappropriated balance in excess of $5,000,000 should be applied to the retirement, through purchase or redemption, of any funded debt at the time outstanding secured by lien upon any property upon which the first mortgage is a lien.

To the extent that any expenditures are provided for or reimbursed, out of the reserve and retirement fund, the new company should not thereafter have the right to issue any bonds or other evidences of indebtedness or any stock ranking, as to either assets or dividends, in priority to, or on a parity with, the preferred stock, to capitalize or reimburse such expenditures; provided, however, that subject to the foregoing restriction, such expenditures (if for purposes for which first mortgage bonds or general mort-

gage income bonds may be issued) may be taken into account in determining the total amount of capital expenditures in respect of 75 percent of which first mortgage bonds or general mortgage income bonds may be issued.

The new first mortgage should also contain a covenant to the effect that the principal amount of either first mortgage bonds or general mortgage income bonds pledged to secure any indebtedness shall never exceed 150 percent of the principal amount of such indebtedness.

General Mortgage of the new company.

The new general mortgage should constitute a lien, subject to the lien of the first mortgage, upon all property from time to time subject to the lien of the first mortgage. Bonds issued under the general mortgage should be unlimited in authorized principal amount, subject to mortgage provisions and to such limitations, if any, as may be prescribed by the laws of the State or States in which the new company is incorporated.

General mortgage income bonds may be issued from time to time in different series, subject to the limitations and restrictions specified in the mortgage, payable on such date or dates, in such denominations, bearing interest at such rates and containing such provisions in regard to accumulation of interest, redemption, conversion, taxes, place or places and money or moneys of payment, registration, sinking funds, and priority as among the several series, of interest and sinking fund, as may be prescribed by the board of directors of the new company at the time of issue, and approved by us.

There should be issued in connection with the reorganization and for the purposes hereinafter stated, approximately $57,256,669, principal amount, of series A general mortgage income bonds, to be dated January 1, 1939, and to mature January 1, 2014, bearing interest contingent upon earnings at the rate of 4½ percent per annum, cumulative to the maximum amount at any one time of 13½ percent (including interest for the income period next preceding), whether for consecutive or nonconsecutive periods, as hereinafter defined, but in priority to interest on the series B bonds, payable on the first day of April, commencing April 1, 1940.

There should also be issued in connection with the reorganization, for the purposes hereinafter stated, approximately $51,422,111, principal amount, of general mortgage series B convertible income bonds, to be dated January 1, 1939, and to mature January 1, 2039, bearing interest contingent upon earnings at the rate of 4½ percent per annum, cumulative to the maximum amount at any one time of 13½ percent, (including interest for the income period next preceding), whether for consecutive or nonconsecutive income periods as hereinabove defined, but in subordination to interest on the series A bonds, payable on the first day of April, commencing April 1, 1940.

Interest on general mortgage income bonds should be paid, together with any accumulations thereof, only out of available net income of the new company, as hereinafter provided, with such priority as among several series as may be determined by the board of directors of the new company at the time of the creation of such series, provided, however, that the interest on any new series should not have priority over series A or series B. Accumulations of interest should not bear interest. Upon the happening of any event or default provided in the mortgage, and institution with the approval of any court or public regulatory body having jurisdiction in the premises of a proceeding seeking reorganization of the new company, or the appointment of a trustee or receiver for all or any substantial part of its property, all arrears of accumulated interest should become immediately due and payable.

No interest should be paid on the general mortgage income bonds if the amount so paid would be less than ¼ of 1 percent, and all payments should be in multiples of ¼ of 1 percent. Any such excess available for interest not paid because of the foregoing provisions should be reserved and added to the amount available for such interest in the succeeding income period for the payment of such interest.

The series B convertible income bonds should be convertible into the common stock of the new company at the option of the holders at any time (but, in the case of said bonds called for redemption, only up to and including the day which shall be 30 days prior to the redemption date, or, if, such day shall be a holiday the first business day thereafter) at the rate, for each $1,000 bond, of 10 shares

of common stock, with appropriate provisions for adjustment of interest and dividends and in the event of stock dividends or split-ups or in the event of accumulation of shares.

The series A and series B income bonds should be redeemable for the sinking fund at any time on 60 days' notice at the face value thereof, plus accrued and unpaid accumulations of interest; and otherwise as a whole or in part on any interest payment date on 60 days' notice and at any other time on 90 days' notice at 101 percent of the face value thereof if redeemed on or before January 1, 2014, and thereafter at face value plus accrued and unpaid accumulations of interest to the extent accumulations are authorized.

The general mortgage income bonds of series A and series B should be entitled to the benefit of a sinking fund to be created by the annual payment to the mortgage trustee on April 1 of each year, out of available net income as hereinafter defined, of an amount equal to ½ of 1 percent of the aggregate principal amount of general mortgage income bonds, series A and series B, authenticated and delivered. The sinking fund should be applied from time to time to the purchase, at not exceeding their principal amount, or, if not obtainable, to the redemption, of general mortgage income bonds, series A, so long as any of the bonds of said series shall be outstanding, and thereafter of general mortgage income bonds, series B, and all bonds so purchased and redeemed shall be cancelled. Sinking funds may be provided for general mortgage bonds of any other series as may be determined by the board of directors of the new company with such priority as between such series as the board may decide, provided none of such series shall have priority over series A or series B.

General mortgage income bonds, in addition to those issued in the reorganization may be issued from time to time in lieu of first mortgage bonds, for the purposes and subject to the restrictions stated for the issue of additional first-mortgage bonds. The general mortgage should contain a covenant substantially to the effect that no general mortgage income bonds (other than those to be issued under the plan) shall be sold or pledged (except to refund outstanding first mortgage bonds or income bonds or underlying obligations) unless the board of directors of the

new company, by resolutions adopted by two-thirds of the entire number of directors, shall have authorized such sale or pledge.

The general mortgage should contain covenants similar to those in the first mortgage in respect of the reserve and retirement fund.

The new general mortgage should also contain a covenant to the effect that the principal amount of either first mortgage bonds or general mortgage bonds pledged to secure any indebtedness shall never exceed 150 percent of the principal amount of such indebtedness.

Terre Haute Bonds.

The mortgage indentures securing the first mortgage bonds of the Southern Indiana Railway Company, the first mortgage bonds of the Bedford Belt Railway Company, the first and refunding mortgage bonds of the Terre Haute and the income mortgage bonds of the Terre Haute should be modified by supplemental indentures and the existing bonds correspondingly modified, without disturbing their liens, or new bonds issued in exchange for the existing bonds, in either case effective approximately as of the date of consummation of the plan, so that (1) the maturity of all such bonds shall be the date of maturity of the first mortgage series A bonds of the new company, (2) all such bonds shall bear fixed interest at the rate of 2.75 percent per annum and contingent interest in addition at the rate of 1.5 percent per annum, the payment of the latter being contingent upon the earnings of the new company to the same extent, in the same manner, and with the same limitations, as is provided for the payment of interest on the general mortgage series A income bonds of the new company, as hereinafter described, (3) the holders of the aforesaid bonds shall waive all equipment vacancies under the existing mortgages up to the effective date of the plan, January 1, 1939, (4) the new company may, in the replacement of equipment retired after the effective date of the plan, include equipment purchased under equipment trusts, the lien of the trusts not to exceed 75 percent of the total cost of the equipment, and (5) the mortgages contain appropriate provisions permitting, subject to the approval of this Commission, abandonment of Terre Haute property which the board

of directors may deem it to the interests of the system to abandon. The supplemental indenture for the Terre Haute income mortgage should declare null and void the guaranty of the Chicago, Milwaukee and St. Paul Railway Company endorsed on the income bonds. A new lease should be made between the Terre Haute and the new company to replace the present lease between the Terre Haute and the debtor. The new lease should provide for the assumption by the new company of the payment of the principal amounts of the mortgage bonds, modified as above provided, and for the payment by the new company of the interest on the modified bonds at the rates and under the conditions specified in the modified bonds, in addition to an amount, not exceeding $12,000 a year, to pay the taxes and corporate expenses of the Terre Haute. The lease should permit, subject to the approval of this Commission, the abandonment of property which the board of directors may deem to the advantage of the system to abandon, and shall contain such provisions as may be deemed appropriate to facilitate a consolidation of the properties of the Terre Haute with those of the new company.

The foregoing provisions of the plan, if accepted by substantially all the Terre Haute bondholders, should become effective approximately as of the consummation of the plan. The reorganization committee (hereinafter provided for), upon confirmation of the plan by the court, should submit the foregoing provisions, with copies of this report and order, to all the Terre Haute bondholders, and should report to the court the result of such submission. Should the court determine that the foregoing provisions relative to the treatment of the Terre Haute bonds and the Terre Haute lease shall not have been accepted by substantially all the Terre Haute bondholders, then the existing lease between the Terre Haute and the debtor, together with the guaranty of the payment of the principal and interest of the Terre Haute income mortgage bonds, should be rejected, in so far as the plan herein approved is concerned, as of the date of such determination by the court, without prejudice to either negotiation of a new lease or a consolidation of the properties of the Terre Haute with those of the new company, on terms subject to our approval. In the event the court determines that the described provisions have not been so ac-

cepted, appropriate adjustment should be made by the court in the corporate structure of the new company, approved herein, by elimination of the assumption of obligation with respect to the Terre Haute bonds, and such other adjustments as the court may deem necessary to put the plan into effect.

Available Net Income: Additions and Betterments Fund.

The available net income should be determined for each calendar year commencing January 1, 1939 (herein called income period), as promptly as possible after the termination thereof, by deducting from the consolidated income of the new company and its railroad subsidiaries available for fixed charges for such income period (determined in accordance with our accounting rules or those of any other public regulatory body having jurisdiction in the premises at the time in force, or, to the extent not covered by such accounting rules, in accordance with sound accounting practice):

(a) All fixed charges accrued during such income period; and

(b) All other charges properly deductible from such income in determining income after fixed charges under such accounting rules then in force, but excluding contingent interest* and additions and betterments fund and sinking fund requirements hereinafter provided for;

provided, however, that if the new company shall not come into ownership and possession of the properties now operated by the bankruptcy trustees of the debtor on or before the effective date of the plan, the available net income for any period after the effective date of the plan, until the new company comes into possession and operation of such properties, should be computed as if the new company had come into such ownership or possession on said date, and had issued, as of said date, the new securities issuable under the plan, except that the present Terre Haute bonds should be considered as undisturbed until the effective dates of the modified or new bonds issued under the supplemental indentures.

* Contingent interest paid on the modified Terre Haute bonds should also be excluded for the purpose of this determination although such interest is to be shown in the accounts as rent for leased roads.

The available net income for each income period should be applied to the following purposes and in the following order:

(1) The available net income should first be applied, on April 1 of each year, beginning 1940, to the creation of a fund to provide for, or to reimburse the treasury of the new company for, all the cost, payable in cash, of additions and betterments to the mortgaged property, including equipment, which are properly chargeable to capital account under our accounting rules then in force, provided, however, that

(a) To the extent that expenditures are so provided for or reimbursed out of the additions and betterments fund, the new company should not thereafter have the right to issue any bonds or other evidences of indebtedness or any stock ranking, as to either assets or dividends, in priority to, or on a parity with, the new preferred stock, to capitalize or reimburse such expenditures; provided, however, that, subject to the foregoing restriction, such expenditures (if for purposes for which first mortgage bonds or general mortgage income bonds may be issued) may be taken into account in determining the total amount of capital expenditures in respect of 75 percent of which first mortgage bonds or general mortgage income bonds may be issued;

(b) The amount set aside in the additions and betterments fund out of available net income of any income period (A) should not be less than $2,500,000 (or such portion of that sum as may be available), plus the amount, if any, by which the amount applied to the fund out of available net income in the last preceding income period was less than $2,500,000 (such deficiency payments not to apply to any prior year except the year immediately preceding); (B) plus such additional amount as the board of directors shall determine to set aside for the fund out of available net income for the income period, provided that the total amount so set aside for the income period shall not exceed $5,000,000, or 4 percent of railway operating revenues, whichever amount is greater, less any amount applied out of the re-

serve and retirement fund for the income period for capital expenditures other than payments of equipment obligations and payments on account of new equipment.

If the new company should establish and maintain, in such manner as may be permitted or required by law or lawful regulation, an operating expense account for its roadway and structures, then the additions and betterments fund should be paid from the reserve for depreciation on roadway and structures so credited in respect of the applicable income period, to the extent that the amount so credited to said depreciation reserve shall be adequate therefor.

(c) The additions and betterments fund should be segregated from the general funds of the new company and held in cash or invested in United States Government securities; and

(d) If, after the final determination of the amount to be paid into said fund in respect of any calendar year, and of the amount appropriated or to be appropriated therefrom in respect of expenditures made during such calendar year, the unappropriated balance of said fund, as of the end of said calendar year, shall exceed $5,000,000, such unappropriated balance in excess of $5,000,000 should be paid into the reserve and retirement fund hereinbefore provided for; provided, however, that the unappropriated amount not in excess of $5,000,000 should be carried over to the succeeding year, and be used in that or succeeding years to the extent required for the described purposes for which the fund is created.

(2) Any then remaining available net income should be applied to the extent, if any, by which the new company shall have failed to earn its fixed charges in the last preceding income period, to reimburse the treasury of the new company for any amount expended in paying fixed charges for such income period in excess of net income available for interest for such income period.

(3) Any then remaining available net income should be applied to the sinking funds elsewhere pro-

vided in the plan for the retirement of first-mortgage or general-mortgage bonds, if any, issued for the acquisition of equipment free of other liens.

(4) Any then remaining available net income should be applied to the payment on April 1 of each year, commencing 1940, of the contingent interest on the new company's general mortgage income bonds and any accumulation thereof, with such priority as between the several series of general mortgage income bonds as may be provided in such bonds, subject to the provisions as to priority herein stated. If interest is payable for any income period on general mortgage income bonds of series bearing interest at different rates (including accumulations), but without priority as to payment as between each other, and the available net income applicable thereto shall be insufficient to pay all unpaid interest for such income period (including accumulations), the amount applicable should be apportioned among the several series in proportion to the unpaid interest for such income period (excluding accumulations) on the bonds of the several series, respectively. Payments of contingent interest on the four issues of new Terre Haute bonds, up to the limiting rate of 1.5 percent per annum fixed in the supplemental indentures, should be in multiples of ¼ of 1 percent, and should rank with the debtor's new general mortgage series A bonds, and ahead of the series B bonds, in priority of interest payment. In periods when the available net income is not sufficient to enable the new company to pay the full rate of 4½ percent on the series A bonds, the ratio of the rate actually paid to the rate of 4½ percent should be applied to the 1.5-percent rate on the new Terre Haute bonds in determining the amount of contingent interest payment on the latter bonds, so that the Terre Haute bondholders of each class will receive the same proportion of the contingent interest payment due on their bonds as will the new company's creditors who receive general mortgage series A bonds.

(5) Any then remaining net available income should be applied to the payment of the sinking funds provided for the several series of the general mortgage income bonds at the time outstanding; with such

priority, as between the sinking funds provided for the several series, and otherwise at the times and upon such terms, as may be provided in such bonds;

(6) Any then remaining net income should be applied to payments to the sinking fund to be created and paid to the trustee under the first mortgage in the event the principal amount of first-mortgage bonds outstanding plus all other funded debt bearing fixed interest shall exceed either (a) 35 percent of the total capitalization of the new company, determined as elsewhere provided in the plan, or (b) 55 percent of such total capitalization less the principal amount of funded debt bearing contingent interest at the time outstanding;

(7) Any then remaining available net income may be applied, as the board of directors of the new company may determine, to dividends on the several classes of stock in the order of their priority, or to general corporate purposes.

New Stock.

The new preferred stock should be authorized in unlimited amount subject to the laws of the State or States in which the new company is incorporated. Approximately 1,086,760 shares of preferred stock, series A, having a par value of $100 each, should be issued in the reorganization. Other series may be later issued under the limitations and restrictions specified in the certificate of incorporation of the new company, with dividends at such rates and to contain such provisions in regard to accumulation of dividends, voting power, priority or liquidation, redemption, conversion, value (par or no par), retirement funds, participation, etc., as may be prescribed by the board of directors of the new company at the time of creation of the series, and approved by us. So long as any shares of series A stock shall remain outstanding, the consent of the holders of at least two-thirds in number of shares of series A stock, then outstanding, given in writing or by resolutions adopted at a meeting, should be necessary for effecting the issue of any additional shares of preferred stock ranking, either as to dividends or as to distribution upon liquidation, in priority to or on a parity with the preferred stock of series A.

The holders of series A preferred stock should be entitled to receive, in respect of any income period, dividends at the rate of 5 percent per annum payable, but only as and when declared by the board of directors of the new company, out of the available net income of the new company as defined above. Such dividends should be noncumulative, whether or not earned, but no dividends should be paid on the new common stock unless and until there shall have been paid, or declared and funds set apart for payment, on the series A preferred stock, dividends at the rate of 5 percent per annum in respect of the three consecutive income periods immediately preceding the date of payment on the common stock. After dividends shall have been paid or declared or funds set apart for payment on the common stock at the rate of $3.50 a share in respect of any one income period, each share of series A preferred stock will be entitled to participate equally with each share of common stock in any additional dividends paid or declared or set apart for payment to the extent of $1 a share in respect of such income period.

The series A preferred stock should be redeemable, at the option of the new company, in whole or in part at any time on 30 days' notice by publication, at its par value, together with any unpaid dividends that shall have been declared thereon.

In the event of the dissolution, winding up or liquidation of the new company, the holders of the series A preferred stock should be entitled to receive out of the assets of the new company, the par value of their shares with all dividends that shall have been declared thereon, before any distribution shall be made to the holders of the common stock, but should not be entitled to share in any assets of the new company thereafter remaining.

The holders of preferred stock, series A, should be entitled to voting power on all matters in respect of which stockholders of any class shall be entitled to vote, and should further be entitled, voting separately as a class, to elect a majority of the board of directors of the new company until full 5-percent dividends shall have been paid upon the preferred stock, series A, for three consecutive calendar years. Thereafter, each share of preferred stock, series A, should be entitled to vote equally with each share of common stock upon the election of directors, by cumulative voting, until such time as full dividends on the

preferred stock, series A, shall not have been paid during three consecutive calendar years, in which event the holders of the preferred stock, series A, should again become entitled to elect a majority of the board of directors and to retain this right until full dividends shall have again been paid for three consecutive calendar years, when equal voting rights for both classes of stock should be resumed.

The new common stock should be unlimited in authorized amount, subject to such limitations, if any, as may be provided in the charter or by the laws of the State or States in which the new company is incorporated. The new common stock should be without par value. For the purposes of the reorganization, approximately 2,103,194 shares should be authorized and issued for allotment to secured creditors in the initial distribution, and not exceeding 55,000 additional shares should be authorized and issued for distribution to the holders of general unsecured claims and the holders of the debtor's adjustment mortgage bonds, as hereinafter provided. Approximately 514,221 additional shares should be authorized and held in reserve for the conversion of the series-B general mortgage bonds on the basis stated in the description of that mortgage. Additional common stock may be issued only with our approval in further proceedings. Each share of new common stock should be entitled to one vote.

Scrip.

The new securities may be issued in temporary form in the first instance or interim certificates may be issued therefor. Scrip may be issued and distributed in lieu of fractions of a share of stock or of bonds. Such scrip may be non-interest bearing or non-dividend bearing, but will be exchangeable for new securities (or interim certificates therefor) when presented in proper multiples on terms and conditions determined by the board of directors of the new company. Accrued interest upon the existing securities has been calculated as of December 31, 1938, in most cases resulting in odd amounts which would involve the delivery of scrip representing small fractions. Such adjustment of these interest amounts as may be necessary to avoid the issuance of scrip in too small fractions may be made by the reorganization committee or the reorganized company in its discretion.

Treatment of Existing Securities.

The following table shows approximately the amounts of new securities allotted to the Finance Corporation and the several classes of the debtor's bondholders on the basis of the percentages indicated in the appendix applied to the respective claims, including accrued interest to the effective date of the plan, subject to final adjustment. The amounts of new securities shown below therefore represent what the holder of each $1,000 bond is entitled to receive under the plan, including provision for the unpaid interest on such bond. Treating accrued interest on the same basis as the principal claim is in accordance with the plans filed, as well as with our views regarding the rights of secured creditors. *Spokane International Ry. Co. Reorganization*, 228 I.C.C. 387; 233 I.C.C. 157:

	Present Claims		Allocation of New Securities to each $1,000 present Bond or Principal of Claim, including interest, in the amount shown accrued to Dec. 31, 1938.				
				General Mortgage			
	Principal Amount	Principal and Interest to Dec. 31, 1938	First Mtg. 4% Bonds	4½% Bonds Series "A"	4½% Bonds Series "B" Convertible	Preferred Stock 5%	Common Stock (Shares) No par value
R. F. C. Loans	$ 11,947,164	$ 11,947,164*	$1,000.00				
Mil. & Nor. Bonds:							
First Mtg. 4½'s	2,117,000	2,220,204	734.12	314.62			
Consolidated Mtg. 4½'s	5,072,000	5,319,200	262.19	367.06	$ 209.75	$ 209.75	
General Mtg. Bonds:							
Series "A" 4's	48,241,000	53,894,090	279.30	391.01	223.44	223.44	
Series "B" 3½'s	8,950,000	9,870,211	275.70	385.99	220.56	220.56	
Series "C" 4½'s	42,597,000	48,249,191	283.17	396.44	226.54	226.54	
Series "D" 4½'s	24,000,000	27,217,320	283.51	396.92	226.81	226.81	
Series "E" 4¾'s	15,000,000	17,137,381	285.62	399.87	228.50	228.50	
50-year 5's of '75	106,395,096	127,230,802			179.38	717.50	2.99
Gary First Mtg. 5's	3,000,000	3,562,500					11.87
Adjustment Mtg. 5's	182,873,693	262,423,748					9.78
Unsecured Claims							**

* After deduction of $290,000 paid on the loans January 3, 1939, and $973,299 cash in the hands of the first and refunding mortgage trustee on December 29, 1938.

** Unsecured claims to receive 0.7 share of common stock for each $1,000 of claim, as explained in the report.

Equipment Obligations.

We approve the following provision for existing equipment obligations, which is substantially as stated in the committee's plan: Each equipment-trust certificate of series A, C, D, E, F, G, H, J, K, and L, maturing between April 1, 1935, and December 31, 1940, and not fully paid shall remain undisturbed as to lien and interest but the principal thereof shall be paid at the rate of 20 percent of each installment annually, in accordance with the arrangement followed by the bankruptcy trustees. Equipment-trust certificates of series M and series N, and trustees' equipment-trust certificates of series O, P, Q, R, S, and E, and any other equipment-trust certificates which may be issued by the bankruptcy trustees before the consummation of the plan, together with any other obligations under equipment leases or sales' agreements, are not affected by the plan and should be assumed and paid by the new company when they respectively become due. As has been shown, the equipment obligations now under consideration in connection with the plan aggregate $33,322,999. We find that the interests of the holders of equipment obligations, other than the holders of certificates of series A, C, D, E, F, G, H, J, K, and L, will not be adversely and materially affected by the plan and that submission of the plan to such holders is not necessary. The issue of additional equipment obligations prior or subsequent to the consummation of the plan, if duly authorized under section 20a of the Interstate Commerce Act, is not prohibited under the plan herein approved.

Finance Corporation Claims.

Disregarding other collateral pledged with the Finance Corporation, the $8,665,000 of first and refunding mortgage bonds represents a first lien on a large amount of physical property, securities, and cash, as has been shown. That the value of these assets exceeds the amount due to the Finance Corporation was not questioned. There was testimony that the scrap value of the western lines is at least $10,500,000, or, $9,000,000 for the rail alone; that, on a minimum basis, the value of the stock and bonds pledged under this mortgage exceeds substantially the amount of the debt. The report of our Bureau of Valuation on the elements of value of the debtor's property

shows, for the lines subject to the first lien of the first and refunding mortgage, as of December 31, 1935, the cost of reproduction now, less depreciation, plus the value of lands and rights, as approximately $198,000,000. Evidence was introduced showing the assets and liabilities, earnings, and dividend record of the Indiana Harbor Belt Railroad Company, 15,198 shares of whose stock are pledged under the first and refunding mortgage, such evidence indicating a high value for the stock. The first and refunding mortgage is also a first lien on the debtor's leasehold under the Terre Haute lease. Without considering additional values behind the pledged bonds it would seem immaterial, insofar as the position of the claims of the Finance Corporation is concerned, whether the western lines are operated at a profit or at a loss.

In our opinion, the Finance Corporation is entitled to receive all the cash in the possession of the first and refunding mortgage trustee at the time of the consummation of the plan, such cash consisting of interest and dividends from the securities pledged with the trustee of the mortgage. Our view is predicated on the particular facts in this case, that all the bonds issued and outstanding under this mortgage are pledged with the Finance Corporation, that the mortgage will be cancelled under the plan, and that the margin of security for these loans is unusually large. The effect of applying this cash to a reduction of the loans will be to reduce the fixed charges of the new company. If not so applied the cash position of the new company would be improved to the extent of the amount involved, but this would not be large enough to affect materially the amount of new bonds assigned to the other classes of creditors.

It was pointed out that during the trusteeship a large sum, roughly estimated at $2,000,000, was expended for additions and betterments on the western lines, and that such expenditure had to be met by earnings from the other parts of the system. It was contended that this tends to indicate that the eastern mortgage division should receive credit for any cash held by the first and refunding mortgage trustee. But the matter was not fully developed for the record and in any event we regard the position of the Finance Corporation such that its right to the funds in question is paramount. Counsel for the Finance Corporation state that, as of December 29, 1938, the amount was

$978,298.81. For the purpose of the plan this will be deducted from the principal of the loans (reduced by the repayment of $290,000 on January 3, 1939), leaving $11,947,164 as the balance of the claim to be discharged by the issue of new securities. This balance may be further reduced by additional cash coming into the hands of the mortgage trustee and applied against the debt to the Finance Corporation, so that, when the plan goes into effect, an appropriate adjustment of the amount of new securities issuable to the Finance Corporation will be in order. Subject to such adjustment, we find that the claim of the Finance Corporation for the unpaid balance of loans made to the debtor should be discharged by the issue to the Finance Corporation of new first mortgage 4 percent bonds in an amount equal to 100 percent of the total claim.

Northern First Mortgage.

As hereinbefore shown, the first mortgage of the Northern, under which $2,117,000 of 4½ percent bonds, due June 1, 1939, are outstanding, constitutes a first lien on about 110 miles of line, mostly south of Green Bay, Wis., and certain units of equipment. The report of our Bureau of Valuation shows, as of December 31, 1935, the cost of reproduction of this property, less depreciation, plus the value of lands and rights, as $4,284,286.

The first analysis of the Northern's earnings presented for the record was for the 12 months ended September 30, 1933, and the year 1934, showing incomes available for interest of $228,236 and $370,016, respectively, for all lines, with interest charges of $323,505 per annum on all funded debt. For the year 1936, a statement was introduced showing, for the Northern lines as a whole, $495,182 of income available for interest, and $524,915 as the net earnings of other system lines from traffic interchanged with the Northern. In connection with this so-called interchange traffic, revenues were credited to the Northern on the basis of a mileage prorate, with a minimum of 25 percent to the Northern. Later, the debtor presented a separation of the earnings of the Northern's first mortgage lines and consolidated mortgage lines, showing $411,633 as the available income of the former, as compared with $95,265 of interest on the first mortgage bonds, and $83,549 as the income available from the consolidated

mortgage lines, compared with $228,240 of interest on the consolidated mortgage bonds. The mileage prorate of revenues, with a minimum of 25 percent to the subsidiary, was retained in the later computation. In this and some other respects the Northern was treated as a separate road; otherwise as a part of the system. No severance study was made by the debtor, but testimony was introduced by a witness for the trustee under the Northern's mortgages to show that the Northern could operate successfully as an independent road or in association with some system other than the Milwaukee.

To place the debtor's computation for 1936 on a strictly system basis, F. W. Walker estimated that the adjustment downward of approximately $125,000 should be made in the income available for interest on the Northern's first mortgage bonds, reducing the amount to $286,633, or about three times interest charges.

If the excess earnings for the first mortgage bonds be added to the direct earnings for the consolidated mortgage bonds, as indicated in these studies, the interest on the latter bonds was earned about 1.2 times. This result will be referred to later in connection with the treatment of the claims of the holders of the consolidated mortgage bonds.

From the evidence regarding the elements of value and earning power of the Northern first mortgage lines we conclude that the holders of the first mortgage bonds should be entitled to receive the new securities provided herein, viz. on the basis of new first mortgage 4 percent bonds equal to 70 percent and new general mortgage 4½ percent bonds, series A, equal to 30 percent of the total claim, including any interest unpaid. The foregoing tables showing the allocations of the new securities, as well as the appendix, were prepared on the basis of $103,204 of unpaid interest accruing to December 31, 1938.

Terre Haute Bonds.

As stated at the beginning of our discussion, the supplemental indentures for the four Terre Haute mortgages should be executed and the present bonds of each class should be modified so as to extend their maturity dates to the maturity date of the first mortgage bonds of the new company, to provide for the payment of fixed interest at

2.75 percent and contingent interest at 1.5 percent, and otherwise, as specified earlier in this report and in our order, provided substantially all the bondholders waive their claims in respect of equipment deficiencies under the mortgages, and indicate their acceptance of the several provisions of the plan affecting their interest.

The new bonds remaining available under our plan, after provision for the claims just mentioned and for new money, will consist of approximately $40,421,864 of first mortgage bonds and $108,012,719 of general mortgage bonds, series A and series B, while the secured creditors for which provision remains to be made consist of five classes holding, respectively, $5,072,000 of Northern consolidated mortgage bonds, $138,788,000 of the old Milwaukee's general mortgage bonds, $106,395,096 of the debtor's 50-year mortgage bonds, $182,873,693 of the debtor's adjustment mortgage bonds, and $3,000,000 of the Gary first mortgage bonds. Including unpaid interest accrued to December 31, 1938, these claims amount to approximately $555,000,000.

General Mortgage Bonds; Northern Consolidated Mortgage Bonds.

Because of their first lien position and the earnings available for interest, the general mortgage bonds and the Northern consolidated mortgage bonds take precedence over the other claims just mentioned above. The general mortgage liens are those upon which the other divisions are largely dependent for revenue. The report of our Bureau of Valuation shows, as of December 31, 1935, the cost of reproduction of these lines, less depreciation, plus the value of lands and rights as $359,115,599. The debtor's allocation of earnings in 1936 shows the income of the general mortgage lines available for interest as $8,716,847, or $7,561,688 after deducting interest on equipment obligations. The latter sum is 1.16 times interest charges on the general mortgage bonds, including the series G bonds pledged with the Finance Corporation. In this computation no credit was given to the general mortgage lines for the use of shops, roundhouses, etc., used in the repair of equipment operating on other parts of the system, and the rental of owned equipment was apportioned in such a manner that the general mortgage division bears the carrying charges on reserve equipment required during pe-

riods of peak traffic. The committee believes that if the earnings study had been made strictly on a system basis, providing properly for the use of property subject to one mortgage by the lines of another mortgage, the income of the general mortgage lines would be increased. In this connection it is important that the earnings of the general mortgage lines were determined by deducting from the system total the separate income computed by the debtor for each of the other mortgage divisions. Any change in the figures for the Terre Haute, the Northern, the Gary, or the first and refunding mortgage would, therefore, affect the showing for the general mortgage lines.

Thus on the basis of income available in 1936 for payment of interest, stated above, the Northern's consolidated mortgage bonds are on a parity with the general mortgage bonds. The cost of reproduction of the property with respect to which the Northern consolidated mortgage is a first lien, less depreciation, plus the value of lands and rights, as of December 31, 1935, was $8,223,131, and the corresponding sum for the property subject to the first lien of the Northern's first mortgage and the second lien of the consolidated mortgage was $4,284,286.

We conclude that the holders of the debtor's general mortgage bonds and the holders of the Northern's consolidated mortgage bonds should be accorded similar treatment under the plan, receiving the securities of the new company as provided herein, viz., each on the basis of new first mortgage bonds equal to 25 percent of the total claim, including unpaid interest, new general mortgage bonds, series A, equal to 35 percent, new general mortgage bonds, series B, equal to 20 percent, and new preferred stock of par value equal to 20 percent.

50-year Mortgage 5-percent bonds of 1975.

The committee's proposed treatment of the 50-year bonds, assigning to them new junior income bonds and preferred stock, placed these claims in an entirely subordinate position to that of the general mortgage bonds. On the basis of earnings, the committee considered this treatment to be liberal. In the plan recommended by the examiner, income bonds of series A and series B were assigned for 20 percent of the 50-year mortgage claims, thereby advancing these claims somewhat in the participation of earnings and permitting them to share the new

income bonds with senior creditors, albeit on a quantatively lower basis.

As previously indicated herein, the evidence bearing upon the treatment of these claims includes analyses of the earnings of the western lines, and of the "pieces of lines east," the interest and dividends derived from the securities pledged under the first and refunding mortgage, and the net earnings of the Terre Haute, in which the leasehold interest is subject to the lien of the first and refunding mortgage. The holders of the 50-year bonds claim the benefit of practically all these earnings.

For the lines west, the debtor's studies showed a deficit of $142,591 in income available for interest in 1930, when the system income available for fixed charges was $18,992,367, a deficit of $1,540,808 in 1931, when the system income was $10,263,185, and a deficit of $1,108,535 in 1936, when the system income was $12,298,916. For the "pieces of lines east," the debtor computed the available income at $170,100. The income from securities pledged under the first and refunding mortgage, largely dividends on the Indiana Harbor Belt stock, was shown to have amounted to $402,031 in 1936. The net income of the Terre Haute in 1936, after payment of all interest charges, was computed at $875,327.

The propriety of crediting the first and refunding mortgage or the 50-year mortgage with the earnings of the "pieces of lines east" is rendered doubtful in the absence of a judicial determination of the question whether these lines are subject to the first lien of the first and refunding mortgage or to that of the general mortgage. The propriety of crediting the 50-year mortgage with the net income of the Terre Haute, requiring the assumption that the first and refunding mortgage may be satisfied by other earnings, is also doubtful. An analysis presented by the debtor at the 1935 hearing, purported to show that after deducting interest on all the first and refunding mortgage bonds, approximately $1,000,000 would be available for interest on the 50-year bonds, on the basis of $10,263,185 of system earnings available for fixed charges, approximately $2,000,000 of net income from the Terre Haute, and a deficit of $500,000 on the lines west. From this the debtor concluded that the 50-year bonds began to earn some interest at about the point where full interest was earned on all prior fixed charges. The debtor considered, how-

over, that even with a more favorable showing for the 50-year bonds, it would be improper to default in the payment of interest on the general mortgage bonds in order to pay some interest on the 50-year bonds. The debtor stated that in a foreclosure by the general mortgage bondholders following such a default the Terre Haute lease would be given up, and further stated that the Terre Haute could not be operated in connection with the first and refunding mortgage lines. The gist of this testimony was summarized in the committee's brief by the statement that the tenure of the Terre Haute lease and the availability of excess earnings from that line are contingent upon the accrual of a continuing advantage therefrom to the general mortgage lines with which they connect, and that the lease would not be continued if it were permitted to operate to put any interest payment to the 50-year bonds ahead of full interest on the general mortgage bonds.

The committee considered the $402,031 paid on the securities pledged under the first and refunding mortgage to be absorbed in the treatment of the Finance Corporation under the plan, leaving the western lines with a deficit of about $1,000,000, as the lien thereon would pass to the 50-year mortgage upon the cancellation of the first and refunding mortgage. The committee pointed out that this deficit would not be wiped out even if it be assumed that the $875,327 of net income from the Terre Haute could be applied as a credit to the 50-year bonds. Under the committee's assignment of new series B income bonds to 40 percent of the claims of the 50-year mortgage bondholders, the charges ahead would aggregate $11,994,812 a year (including $2,500,000 for the additions and betterments fund) before the 50-year bonds would participate in earnings.

The bondholders' witness testified that the analysis of earnings for the western lines should be made for two full years, following methods other than those used by the debtor, among which changes would be the allowance of preferential divisions of 10 percent to the originating line in addition to the mileage prorate of revenue. He directed specific criticisms to alleged errors of calculation by the debtor, its charges for repairs to freight cars, terminal expenses, and the payment for use of equipment. His studies led him to the conclusion that the first and refunding mortgage lines contributed $6,249,099 of gross revenues and $3,300,400 of net revenues to the general mortgage

lines in 1936; that the income for the 50-year mortgage lines, after payment of interest on the bonds of the Terre Haute, the Northern, the Gary, and the first and refunding mortgage lines, including the "pieces of lines east," was approximately $2,000,000, while the income of the general mortgage lines available for interest was approximately $6,400,000, after interest on equipment-trust certificates.

Aside from the questionable inclusion of the "pieces of lines east" and the Terre Haute in the calculations of this witness, the comment may be made that he did not attempt a new analysis of each mortgage division consistent with his revision of the debtor's study for the western lines. We think that if the earnings studies for 1936 are to be rejected there is no satisfactory substitute short of a new segregation study embracing the entire system. This is not to say that careful consideration should not be given to Parker's testimony. His estimate of $2,000,000, mentioned above, is roughly comparable with the debtor's estimate of $1,000,000 in 1935, representing the earnings for the 50-year bonds, after payment of all interest on the general mortgage bonds. We note, also, that his results, on the basis of system earnings of approximately $12,300,000, indicate all interest charges on the general mortgage bonds to be earned while only 38 percent of the interest on the 50-year bonds is covered.

The examiner's proposal to assign new series A income bonds to 10 percent, and new series B income bonds to 10 percent, of the claims of the 50-year bondholders would result in their participation with senior creditors when the system income available for interest exceeds $6,364,602, after payment of $2,500,000 to the additions and betterments fund. We do not consider such treatment of the 50-year bonds to be justified on any basis of earnings shown. If the holders of the 50-year bonds are assigned a part of the new series B income bonds only, as herein provided, they will begin to share earnings with the general mortgage bonds and Northern consolidated bonds after $8,675,000 of prior charges, including a payment of $2,500,000 to the additions and betterments fund, such charges reflecting the respective amounts of equipment obligations, etc., upon which this approved plan is based. We think that this treatment goes far toward resolving the doubts as to the accuracy or fairness of the allocation of

earnings in favor of the 50-year bonds, without injustice to the general mortgage bonds. In any event, under the new capital structure which we contemplate, it would be impracticable to assign to these claims new securities wholly junior to those assigned to the holders of the general mortgage bonds. Also, it is impracticable to avoid the assignment of preferred stock to part of the claims of both the 50-year bonds and the general mortgage bonds, resulting in a parity of treatment to the extent of 20 percent of each claim. (See appendix.) However, the 50-year bonds will rank wholly junior in status to the claims of the Finance Corporation and the Northern first mortgage bonds. We see no means by which the exact present lien position of the general mortgage bonds or the 50-year bonds can be preserved except under a prohibitive mortgage structure.

We conclude that the holders of the 50-year bonds should be entitled to receive the securities of the new company as provided herein, viz., on the basis of new general mortgage income series B bonds, equal to 15 percent of the total claim for principal and interest, new 5 percent preferred stock equal in par value to 60 percent, and new common stock equal, at the rate of $100 a share, to 25 percent.

The committee's proposal to allot, in addition to other securities, one share of new common stock to each $1,000 of claim of the holders of the Northern bonds and general-mortgage bonds, should be rejected for the reasons stated by counsel for the debtor, viz., that the settlement with creditors should be limited to a realization of the principal and interest of their debts and that a bonus in the form of stock is unnecessary for a full recognition of existing priorities.

Adjustment Mortgage Bonds.

Under the approved plan, the maximum permissible amount of new bonds and preferred stock will have been allocated before provision is made for the convertible adjustment-mortgage bonds outstanding. The total system debt ahead of these bonds, as shown in the appendix, is approximately $364,000,000. The annual charges on the principal thereof were about $14,596,000, and on the total debt, including unpaid interest, were about $17,000,000. The committee's assignment of one share of new common stock to each $100 of claim of the adjustment mortgage

bondholders was not supported by any special analysis of the equity for this class of creditors, but the committee recognized the desirability of giving them the best treatment possible within the capitalization contemplated.

As compared with the above-stated charges on the debt ahead of the adjustment mortgage bonds, the system income available for interest, as adjusted by the committee, averaged $21,038,461 a year during nine predepression years 1921-29. During the succeeding nine years, 1930-38, the average was $9,571,180, and during the entire 18 years it was $15,304,822. In the discussion of stockholders' equity which follows we take the position that the peak earnings of one or two years in the past cannot be relied on as indicative of an earning power sufficient for a finding that the equity is of value. In the case of the adjustment mortgage bonds the situation is different in that the charges on all prior-lien debt were more than covered over a long period of time prior to the depression and are nearly equalled by the average earnings during the past 18 years, as well as by the earnings predicted for the future normal year. As compared with a debt of approximately $364,000,000 ahead of the adjustment mortgage bonds, the cost of reproduction of the system properties, less depreciation, plus the value of lands and rights, an allowance for working capital, and the net additions and betterments reported by the carriers in 1936 and 1937, was $66,759,838. We consider that the issue of new common stock to the adjustment mortgage bondholders, as proposed by the committee, is justified, but not in the amount proposed. The plan we approve advances the position of the adjustment mortgage bonds over that of the committee's plan since the charges ahead of the new common stock will be reduced by some $1,635,000 below those shown in the committee's plan, on the basis of a $2,500,000 additions and betterments fund in each case.

After the provision hereinafter made for the allotment of 35,625 shares of new common stock to the Gary bondholders, there remains for distribution to the adjustment-mortgage bondholders and to the unsecured creditors 1,804,492 shares of new common stock. We hereinafter set aside 55,000 shares of common stock as representing a fair proportion of the equity of the new company for the unmortgaged assets of the debtor. Thus there will remain 1,749,492 shares for distribution to the adjustment-mort-

gage bondholders for their claim upon the mortgaged assets of the debtor. Since the principal of this claim and interest to June 29, 1935, the date of filing of the petition, amount to $250,420,853, it is evident that the above allotment of stock, taken at $100 a share, will fail to satisfy the claim by $55,471,653. For this portion of their claim, these bondholders should be permitted to participate with other unsecured creditors in the free assets of the debtor. In view of the insufficiency of proceeds of mortgaged assets to meet the claims of the adjustment bondholders and the apparent inadequacy of the free assets to satisfy the deficiency, with interest, and the claims of unsecured creditors, with interest, we find that no allowance should be made in the plan for interest on these obligations for the period subsequent to the date of filing of the petition.

The proportion which $55,471,653 bears to the total amount of unsecured claims, as they finally will be allowed by the court, is not determinable, since there is no way of foretelling the amount of claims which might arise from a rejection of the Terre Haute lease and guaranty of the Terre Haute income bonds. Nevertheless, it is necessary that a distribution of the 55,000 share of common stock be made on the most equitable basis that the facts and circumstances permit. We conclude that, in satisfaction of the aforesaid adjustment mortgage claim of $55,471,653, there should be assigned to the bondholders approximately 39,163 shares of common stock, in addition to the 1,749,492 shares initially assigned. This additional assignment, in respect of the debtor's free assets, is on the basis of approximately 0.7 share to each $1,000 of claim, and the same basis should be followed in the treatment of all other unsecured claims allowed by the court. In the event a substantial part of the 55,000 shares remains unallotted after all the general claims are disclosed and dealt with, such remainder should be distributed pro rata among the holders of the adjustment mortgage bonds and the unsecured claims.

Gary bonds.

During the period prior to 1930, when separate books were kept, the Gary failed to earn the $150,000 of interest on its guaranteed bonds in 1922, 1923, 1924, 1927, and 1928. The studies made for certain subsequent years show that the income available for interest was $142,000 in

1933, $60,000 in 1934, and $54,161 in 1936. But approximately 50 percent of the total revenues in all these years represented Milwaukee traffic, largely coal, which could have been moved over the Milwaukee line via Bensenville and Kirkland. Withdrawing such revenues and substituting the estimated cost of moving the traffic via Bensenville, there would have been a deficit of $45,816 in the Gary's net income available for interest in 1936. Giving effect to the earnings of the other parts of the system in connection with the Gary traffic, including that of the Rockford terminal, the debtor computed the net earnings in 1936 at $48,933. The Gary line, in effect, is cut in two by the trackage operation over the Elgin, Joliet & Eastern Railway, under a burdensome trackage agreement.

The allotment of approximately 11.87 shares of new common stock, as herein provided, to each $1,000 of claim of the Gary bondholders for principal and accrued interest is consistent with the evidence pertaining to the earnings of this line and its utility to the system.

The amount of the obligations herein shown as of the effective date of the plan are subject to change, such as by the payment of equipment obligations, repayment on loans, and payment of bond interest due prior to January 1, 1939. The reorganization committee should be authorized, in order to give effect to such changes, to make such adjustments in the claims provided for in the plan, and such changes in allotment of securities, consistent with the provisions of the plan, as may be approved by the court.

Present Stock.

As of December 31, 1937, the total of funded debt of the system unmatured, including that of the Terre Haute, loans and bills payable, funded debt matured unpaid, interest matured unpaid, unmatured interest accrued, and accrued interest on the adjustment-mortgage bonds was $606,107,641. As of December 31, 1938, the total funded debt of the system, on the basis used herein, was $508,047,413, and the amount of interest accrued and unpaid $118,878,918, a total of $626,926,331.

The latest balance sheets of record show the debtor's investment in road and equipment, as of December 31, 1937, as $691,592,842, and the Terre Haute's investment in road and equipment, as of April 30, 1937, as $28,352,

790, a total of $719,945,632. The amounts of accrued depreciation (equipment) were shown as $50,219,918 and $67,872, respectively. For the Milwaukee, total current assets, deferred assets, and unadjusted credits aggregated $37,518,716, as compared with $23,543,437 of current liabilities, deferred liabilities, and unadjusted credits after deducting depreciation charges and the items included in the amount shown above for total debt and the interest accrued thereon.

The reproduction cost of the system properties, as hereinbefore stated and explained was $662,759,838.

The record of the Milwaukee's earnings in the past has been reviewed. The last year when dividends were paid on the stock was in 1917. Between 1930 and 1936 the income available for payment of interest, as adjusted by the committee and accepted by the debtor, varied between a high level of $20,298,074 and a low of $2,680,530, with an average of $10,270,360. Similarly adjusted, the available income in 1937 was $8,224,809 and in 1938 $6,023,296, bringing the average, 1930 to 1938, to $9,571,180. Future normal earnings were estimated by the committee at $15,894,000 a year. When these amounts are compared with the annual interest charges on the principal of the present debt, $23,739,000 a year, it is evident that the earning power of the system since the period of peak earnings is entirely inadequate to cover the principal of the debt, disregarding more than $118,000,000 of unpaid interest. The total debt of $626,926,331 corresponds approximately to an available income of $28,212,000 capitalized at the low rate of 4½ percent. Only in 1928 and 1929 was such earning power demonstrated. We think that the examiner erred in finding a prospective equity for the preferred stock on the basis of $24,459,932 of average available income during the period 1925-29. That amount exceeds the annual charges on the principal of the present debt but does not take into consideration the large accrual of unpaid interest; in addition, it greatly exceeds the amount earned in any year since 1929. Computations were made by counsel for the committee and introduced at the oral argument showing the interest charges on the total debt at more than $29,000,000 a year. We disagree with the debtor in its contention that the high earning power of the system only 10 years ago indicates the injustice of resolving all uncertainties for the future in such a man-

ner as to forfeit the stock. There is no evidence whatever to indicate that a recovery of the earning power of 1928 29 is reasonably probable, and we regard it as a remote possibility only, which may not be utilized to support a finding that the debtor's stockholders have an equity. In view of the earnings situation it would be improper to give controlling weight to the fact that the indicated reproduction—cost value of the property exceeds the amount of debt. We find that the equity of the holders of the debtor's preferred stock and its common stock has no value and the holders of claims in classes 24 and 25, therefore, are not entitled to participate in the plan.

Counsel for the preferred stockholders' protective committee argue that section 77 was enacted on the composition theory, that the doctrine of the Boyd case, *supra*, does not apply, and that the readjustment of debts can be arranged with retention of ownership by the stockholders. We are required under section 77(e) to make findings in connection with the question of submitting the plan to the stockholders, and in doing so we must consider the aggregate amount of claims of the bondholders and other secured creditors in the light of the earning power of the system, past, present, and prospective, and all relevant facts. Unless an equity for the stockholders is established we are unable to find justification for their participation in the plan. *Case* v. *Los Angeles Lumber Products Co.*, ... U. S. ..... (Decided November 6, 1939).

Unsecured Claims.

The only equity in the property which can be used as the basis of securities to satisfy the claims of general creditors is evidently confined to the value of the debtor's free assets. As far as the record shows such assets are represented by the Milwaukee Land Company, the stock and notes of which, the debtor contends, are of substantial value. The balance sheet of the land company, dated April 30, 1937, shows total assets of $9,021,896, including $3,354,250 for "capitalized overhead on land and timber." After deducting the latter item, the remaining assets would be $5,667,646. The company's income accounts for the five years 1932-36 show net deficits ranging between $331,956 in 1936 to $1,053,996 in 1934, with interest accruals slightly in excess of $600,000 a year. Considering

the above indications of value we find that not exceeding 55,000 shares of new no-par-value common stock may be issued against the debtor's unpledged interest in the land company approximately on the basis of capitalization followed in establishing the new capital structure for the properties subject to mortgages.

These 55,000 shares of new common stock are in principle distributable to all general claimants whose claims shall be allowed by the court. Besides the $445,162 of recorded unsecured claims, as of September 30, 1937, there are the potential claims which may arise from the possible rejection of the Terre Haute lease, and the guaranty of the Terre Haute income bonds, and also the claims of the holders of the adjustment mortgage bonds, already discussed. As previously provided, approximately 39,163 shares of common stock, out of the block of 55,000 shares, should be allotted to the holders of the adjustment mortgage bonds. The remaining 15,837 shares should be applied to the settlement of all other unsecured claims, as approved by the court, on the basis of approximately 0.7 share for each $1,000 of claim. In the event substantially all such remaining shares are not so applied any remaining shares should be distributed pro rata among the holders of the adjustment mortgage bonds and the unsecured claims.

MISCELLANEOUS.

The effective date of the plan should be January 1, 1939, except as to the modification of the Terre Haute bonds, hereinbefore explained.

The new company should pay in cash any interest coupons on the debtor's bonds which were declared payable but had not been paid prior to July 1, 1935, and any interest coupons payable subsequent to that date and prior to the date of consummation of the plan, under orders of the court, if and when such coupons are presented by the holders thereof.

All existing mortgages secured by liens on the properties of the debtor, including the Northern and Gary lines, other than equipment obligations and purchase money liens should be canceled and discharged, and all bonds issued under such mortgages, either pledged or in the possession of the debtor, should be canceled.

All taxes levied, assessed or accrued, against the debtor or the trustees of its property by the United States and remaining unpaid at the date of consummation of the plan, should be paid in cash or be assumed and paid by the reorganized company, without requiring proof thereof in this proceeding, and without prejudice by reason of not having been proved herein, with the same relative priority as they now have with respect to other obligations of the debtor, subject to the statutes of limitations normally applicable to the assessment and collection of such taxes, provided that the liability of the new company for any such taxes which are the subject of litigation on the date of the consummation of the plan or which may become the subject of litigation on any date thereafter and prior to the expiration of the applicable statute of limitations should be determined pursuant to law, and provided further that this provision should not be deemed to preclude either the debtor, the trustees of its property, or the new company from contesting the merits of any such tax in the manner provided by law.

The new company should be deemed to have assumed the obligations under existing executory contracts (except the present Terre Haute lease and the guaranty of the Terre Haute income-mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan, and the new company should also assume any executory contracts made by the trustees, with the approval or authorization of the court, which by their terms do not terminate at or prior to the conclusion of the reorganization proceeding.

Claims against the debtor entitled to priority over their respective mortgages, claims for taxes levied, assessed, or accrued against the debtor or its trustees, current liabilities, and obligations incurred by the trustees during the reorganization proceedings, to the extent unpaid at the date of consummation of the plan, and claims arising from the disaffirmance of executory leases or contracts of the trustees pursuant to orders of the court, in respect of which claims are filed or evidenced in accordance with orders of the court, should be assumed by the new company and paid in the usual course of business with the same relative priority as they now have with respect to

other obligations of the debtor. When so treated, we find that such claims against the debtor, and the interests of parties to executory contracts with the debtor assumed by the new company other than the obligations of debtor's trustees, are not adversely and materially affected by the plan.

The plan should be carried out under the supervision of a reorganization committee consisting of five members, two to be designated by the institutional investors group committee, and the Mutual Savings Bank Group, jointly, one by the protective committee representing the 50-year mortgage bonds, one by the Finance Corporation, and one by the trustee of the debtor's convertible adjustment mortgage. Should any of the parties named fail to designate its representative or representatives, as the case may be, within such time as the court shall consider reasonable, the court should appoint such representative or representatives. The committee should determine the method of carrying out the plan, subject to approval of the court, and the form, except as herein otherwise expressly provided, and the provisions of all mortgages, bonds, coupons, by-laws, stock certificates, and all other instruments necessary or desirable in carrying out the plan. The reorganization committee should not be authorized to solicit securities or authorizations to represent security holders, except upon our approval of the terms of such solicitation pursuant to section 77(p) of the Bankruptcy Act, as amended.

The board of directors of the new company should consist of not less than seven nor more than fifteen members who may, if consistent with the laws of the State under which the corporation is created, be designated initially by the reorganization committee, each of its members being entitled to name his proportionate share of the members of the board, but when the number of board members exceeds an even multiple of the number of persons serving on the committee, then the additional member or members of the board may be elected by a majority vote of the committee as a whole. At a suitable date, within a reasonable time to be fixed by the reorganization committee following the consummation of the plan, the board of directors should be elected by the stockholders in the manner herein described in connection with the voting rights of the new stock.

The new company should, by by-law or otherwise, create a finance committee of not less than three nor more than five members of its board of directors, which committee should have supervision over all financial matters, including the annual budget of capital expenditures, and all other expenditures of the new company's funds, and the new company should covenant to make only such expenditures as shall be approved by said finance committee and authorized by the board of directors, exclusive of emergency expenditures, and of capital items not exceeding $25,000 for any item and not exceeding $200,000 in the aggregate in any year.

The plan should be carried out either by vesting the properties of the debtor, together with the property held by the trustees, in the reorganized Milwaukee corporation or in a new corporation created for the purpose of this reorganization, and by execution by the reorganized or new company of the new mortgages and the issue by it of the new securities contemplated under the plan. The reorganized or new company should be deemed to have come into possession of the properties as of the effective date of the plan, January 1, 1939.

In our opinion, the necessity for a voting trust for the new stock has not been demonstrated and we think the interest of the security holders will be safeguarded if the debtor's proposals with respect to the manner of electing the new board of directors and with respect to the voting rights of the stockholders are followed. With some modifications, this has been done in our plan.

In lieu of the sales provisions incorporated in the plans filed, we approve the following: If so ordered by the court, the plan after it shall be found fair and equitable and confirmed by the court, may be executed by the sale or sales, at not less than fair upset prices, to be fixed by the court, of all or any part of the property of the debtor, all on such conditions and in such manner as the court may direct. Upon any such sale or sales, the property and assets offered for sale may be purchased for the benefit of the new company by the reorganization committee, and in that event there shall be applied on account of the purchase price the distributive share of the proceeds of such sale of all securities, the holders of which shall have assented to the plan, and of the securities, though not assent-

ing to the plan, of all classes which shall have accepted the plan. If the property of the debtor or a substantial portion thereof, so offered for sale should be sold to other than the reorganization committee, the plan herein approved shall be deemed inoperative except in so far as provision is made therein for the sale of the properties as may be ordered by the court, except that if the properties of the Gary should be sold to others than the reorganization committee, the plan should be executed without the inclusion of that property in the reorganization and the coverage of the mortgages and the issue of securities should be adjusted accordingly as directed by the court. In the event of any such sale of substantially all of the properties to the reorganization committee, it may in its discretion sell all or any portion of the new securities distributable under the plan in respect of securities of any creditor, if neither such creditor nor the class to which such creditor belongs shall have accepted the plan, provided that creditors in a class which shall not have accepted the plan, and who themselves shall not have accepted the plan, shall have the right, if they shall so notify the committee within a period of 30 days after the confirmation of the sale, to assent to the plan and receive the securities allocated to them under the plan in lieu of their aliquot share of the proceeds of such sale. The proceeds of sale of securities may be used to pay the portion of the purchase price payable in cash on any such sale of the properties.

The construction of the plan by the court should be final and conclusive. The court may cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient to carry out the plan effectively.

We find that the plan of reorganization herein described, which differs from any of the plans presented, will meet with the requirements of subsections (b) and (e) of section 77 of the Bankruptcy Act, as amended, and will be compatible with the public interest. Modification of the accounts of the debtor and any other companies involved, as a result of the plan finally adopted, should be subject to our approval, and the new company should submit its journal entries for such approval before making its permanent accounting records.

In view of the provisions of subsection (f) of section 77, we will give consideration, when a plan is finally adopted, to the granting of such authorization as may be requisite and appropriate for the execution of the plan, including the issue of securities.

An appropriate order will be entered.

MILLER, *Commissioner*, concurring:

While I am in general accord with the conclusions reached by this report, there are certain principles here adhered to by the majority with which I disagree. Particularly, I wish to call attention to the desirability of setting up sinking fund payments in terms of a percentage of earnings, a participation provision rather than a cumulative requirement for income bonds, the use of no par value preferred stock and conditions under which fixed interest bonds may be issued in the future. (See my separate expressions in *Spokane International Ry. Co. Reorganization*, 233 I. C. C. 157, and *Western Pac. R. Co. Reorganization*, 233 I. C. C. 409.) I think that a participation provision for the preferred stock similar to that for the income bonds described above would be preferable to that of the three-year qualified cumulative provision adopted.

Heretofore I have dissented from mandatory capital fund provisions. The provisions of the additions and betterments fund differ to some extent from those of the capital fund in previous plans and I can readily agree to such a fund in lieu of depreciation of fixed property until an operating expense account for depreciation of its roadway and structures is established. However, no part of the expenditures from the fund should be capitalized.

The debtor suggests the issuance of warrants to the holders of the present preferred and common stock for the purchase of new common stock. The indications are that such warrants would be worthless and that the option to purchase would never be exercised unless the railroads of the country are consolidated into one system or a few large non-competitive systems. (See my separate expression in F. D. 10881, Chicago & Northwestern Railway Company Reorganization, decided December 12, 1939.) In order to give the present equity holders an opportunity to participate in the future earnings of the company, in the

event of such consolidations, it appears to me that warrants should be issued in this reorganization. The optioned stock should be no par value common, subordinate to the common stock authorized herein, and the receipts from the sales thereof should be used first to retire fixed interest indebtedness.

COMMISSIONER PATTERSON did not participate in the disposition of this case.

APPENDIX.

C., M., St. P. & P. R. R. Co. Reorganization, F. D. 10822

Present Obligations and Stock				Approved Plan						
	Principal Amount	Interest accrued to Dec. 31, 1938 and not authorized to be paid	Total	Undisturbed or Extended	First Mortgage Bonds	General Mortgage 4½% Bonds: Series A	General Mortgage 4½% Bonds: Series B convertible	5% Preferred Stock	Common Stock No-par Value shares
					(4% interest except Terre Haute bonds)				
Equipment obligations	$33,322,999	$	$33,322,999	$33,322,999		$	$	$	
R. F. C. loans	12,920,463		12,920,463(a)		(100%) $11,947,164				
Note to Cont. Ill. Nat. B'k. & Trust Company	1,184,000		1,184,000	1,184,000					
Terre Haute bonds:									
So. Ind. Ry. 4s, 1951	7,287,000		7,287,000		7,287,000)				
Bedford Belt Ry. 5s, 1938	250,000		250,000		250,000)				
T. H. first & ref. 5s, 1960	8,056,000		8,056,000		8,056,000)	See Note.			
T. H. income 5s, 1960	6,336,000		6,336,000		6,336,000)				
Mil. & Nor. R. R. bonds:					(70%)	(30%)			
First mtg. 4½s, 1939	2,117,000	103,204	2,220,204		1,554,143	666,061			
					(25%)	(35%)	(20%)	(20%)	
Consol. mtg. 4½s, 1939	5,072,000	247,260	5,319,260		1,329,815	1,861,741	1,063,852	1,063,852	
General Mtg. bonds, 1989:					(25%)	(35%)	(20%)	(20%)	
Series A, 4s	48,241,000	5,653,090	53,894,090		13,473,523	18,862,931	10,778,818	10,778,818	
Series B, 3½s	8,950,000	920,211	9,870,211		2,467,553	3,454,574	1,974,042	1,974,042	
Series C, 4½s	42,597,000	5,652,191	48,249,191		12,062,298	16,887,217	9,649,838	9,649,838	
Series D, 4½s	24,000,000	3,217,320	27,217,320		6,804,330	9,526,062	5,443,464	5,443,464	
Series E, 4¾s	15,000,000	2,137,381	17,137,381		4,284,345	5,998,083	3,427,476	3,427,476	
							(15%)	(60%)	(25%)
50-yr mtg. 5s, 1975	106,395,096	20,835,706	127,230,802				19,084,621	76,338,481	318,077
Convert.—Adjust. mtg. 5s, 2000	182,873,693	79,550,055	262,423,748						1,749,492
									39,163(c)
									(100%)
Gary first mtg. 5s, 1948	3,000,000	562,500	3,562,500						35,625
Unsecured claims (9/30/37)	445,162		445,162		5,000,000	(Assumed amount of new money bonds issued in reorganization. Interest assumed at 4%)			
Total debt	508,047,413	118,878,918	626,926,331						15,837(d)
Preferred stock	119,307,300			No equity					
Common stock, no-par value	1,174,060 shs. (b)			No equity					
Totals, New Company				34,506,999	58,923,171	57,256,669	51,422,111	108,675,971	2,158,194
Terre Haute					21,929,000	(See Note)			

Note: These items, strictly not a part of the capital structure of the new company, are included here since, under the plan, the new company will assume obligation with respect to principal and interest of the four classes of Terre Haute bonds, if the terms thereof are modified as provided in the plan. Such modification includes the provision that the bonds will bear fixed interest at the rate of 2.75 percent and contingent interest at the rate of 1.5 percent per annum.

(a) Reflecting repayment of $290,000 Jan. 3, 1939. Further reduced for purpose of the plan by crediting $973,299 cash in hands of first and refunding mtg. trustee Dec. 29, 1938, leaving $11,947,164 to be discharged by issue of new securities.

(b) Not including capital stock of the Terre Haute. Of such stock, 1,259 shares are not owned by the Milwaukee.

(c) Additional common stock assigned on basis of free assets.

(d) Other additional common stock issued on the basis of free assets; to be issued to holders of unsecured claims as provided in the plan.

SUMMARY

	Principal Amount	Annual Charges
Equipment obligations, to be assumed; maturities to be rearranged in part	$ 33,322,999	$ 1,286,000
Bank note, undisturbed	1,184,000	23,680
First Mtg. bonds of new company	58,923,171	2,356,927
New Terre Haute bonds; portion representing fixed interest	15,350,300	603,047
Total fixed int. debt	108,780,470	4,269,654
Adds.—Betts. fund; mandatory payment		2,500,000
Gen. mtg. 4½% income bonds of new company	108,678,780	4,890,545
New Terre Haute bonds, portion representing contingent interest	6,578,700	328,935
Total system debt	224,037,950	
Sinking fund, approx		543,394
Charges ahead of dividends		12,532,528
New 5% preferred stock	108,675,971	5,433,798
New no-par common stock, shown at $100 a share	215,819,400	
	348,533,321	

Percent of debt to total capitalization—40 8

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of volume V of the printed record, which together with volumes I, II, III and IV constitutes the printed record, printed under my supervision and filed on the sixth day of June, 1941, in the following entitled causes:

Cause Nos. 7590, 7610 through 7617.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this [illegible]th day of January, A. D. 1942.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the first day of October, in the year of our Lord one thousand nine hundred and forty, and of our Independence the one hundred and sixty-fourth.

In the Matter of
Chicago, Milwaukee, St. Paul & Pacific R. R. Co.,
Debtor.

Chicago, Milwaukee, St. Paul & Pacific Railroad Co.,
Appellant,
7590 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees.

Union Trust Co. and Illinois State Trust Co., as Trustees, *et al.*,
Appellants,
7610 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees.

Israel A. Abrams, *et al.*,
Appellants,
7611 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees.

H. C. Orton, *et al.*, etc.,
Appellants,
7612 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees.

Guaranty Trust Co. of New York, *et al.*, etc.,
Appellants,
7613 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees.

Chicago, Terre Haute & Southeastern Ry Co., Income Mortgage Bondholders' Committees, *et al.*,
Appellants,
7614 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

United States Trust Co. of New York, as Trustee, etc.,
Appellant,
7615 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees.

Trustees of Princeton University, *et al.*, etc.,
Appellants,
7616 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees.

E. Stanley Gilnes, *et al.*, etc.,
Appellants,

And, to-wit: On the eighteenth day of February, 1941, the following proceedings were had and entered of record, to-wit:

Tuesday, February 18, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company, *Appellant*,

7590 *vs.*

Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellant for a stay of proceedings pending appeal, it is ordered by the Court that the submission of the plan of reorganization by the Interstate Commerce Commission to the creditors be stayed until determination of the appeal herein; without prejudice, however, to the right of the Interstate Commerce Commission or other interested parties to move for dissolution of said order.

And afterwards, to-wit: On the eleventh day of March, 1941, there was filed in the office of the Clerk of this Court, a stipulation as to printing record on appeal, etc., which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.	(No. 60463.) C. C. A. Nos. 7590 *et al* 7610-7617.

STIPULATION AS TO USE OF ORIGINAL EXHIBITS AND REPORTS, AND TO OMIT FROM PRINTING CERTAIN OTHER PARTS OF THE TRANSCRIPT ON APPEAL.

In accordance with Rule 14, subparagraph 2, of the Rules of the Circuit Court of Appeals for the Seventh Circuit, and upon informal advice from the clerk of the Supreme Court of the United States to counsel for the Debtor that it is proper and permissible for the record on any petition for certiorari in this cause to contain certain original records without printing thereof as provided in Paragraph I of this stipulation.

I.

It Is Hereby Stipulated by and between the parties in the above-entitled proceeding by their respective attorneys, that the originals of all exhibits included in the Record on Appeal filed in the proceeding before the Interstate Commerce Commission and before the District Court in the hearings on the plan of reorganization, the originals of all Trustees' reports pursuant to subsection c (9) of Section 77 of the Bankruptcy Act as amended included in the Record on Appeal, the originals of the reports accompanying

the orders of the Interstate Commerce Commission entered June 23, 1936, August 5, 1936, November 14, 1936, April 24, 1937, and June 15, 1937, and the originals of all General Balance Sheets and Monthly Income Accounts included in the Record on Appeal, shall not be printed in the printed Record on Appeal from the order of November 13, 1940, approving the plan of reorganization, but that said originals shall be for all purposes a part of said Record on Appeal and a part of the record on any petition for certiorari in the Supreme Court of the United States that may be filed by any party in this cause and may be considered and referred to by all parties as fully as if said originals were printed; and an order shall be entered by the Circuit Court of Appeals for the Seventh Circuit approving this stipulation and authorizing said originals to be a part of the Record on Appeal for all purposes without printing thereof.

II.

It Is Further Stipulated that of the stenographer's transcript of testimony designated to be included in the transcript of Record on Appeal, only the following shall be printed:

Pages 1 to 1666, inclusive, of the transcript of testimony before the Interstate Commerce Commission (being the hearings on the plan only, excluding oral argument, hearing on allowances, and combined oral argument in Chicago and North Western and Chicago, Milwaukee, St. Paul and Pacific Reorganization matters).

All of the transcript of the testimony of J. W. Severs before the District Court on December 12, 1939.

Pages 1 to 609, inclusive, of the transcript of testimony before the District Court on the hearings on the plan, September 4 to 9, 1940, the balance of the dates to September 13, 1940, being occupied with argument only.

All of the transcript of the proceedings before the District Court on November 13, 1940.

III.

It Is Further Stipulated that the following items certified to the District Court by the Interstate Commerce Commission shall not be printed because they are already included in the provisions of Paragraph I of this stipulation, being exhibits 174, 175, and 189, respectively, of the ex-

hibits filed in the proceeding before the Interstate Commerce Commission in the hearings on the plan of reorganization:

Plan of Reorganization filed with the Interstate Commerce Commission January 10, 1938;

Modified Plan of Reorganization filed with the Interstate Commerce Commission January 27, 1938;

Modifications suggested by the Debtor filed with the Interstate Commerce Commission January 28, 1938.

Lee Walker,
C. M. Clay,
Reconstruction Finance Corporation.

Sidley, McPherson, Austin & Burgess,
Institutional Group Committee.

Albert Y. Osborn for Charles W. Paltzer,
Oliver & Donnally,
Mutual Savings Bank Group Committee.

Montgomery, Hart, Pritchard & Herriott,
C. H. R.,
Shearman & Sterling, C. H. R.,
National City Bank of New York and William W. Hoffman, Mortgage Trustees.

Wilson & McIlvaine,
By S. K. Jackson,
Stewart & Shearer,
By S. K. Jackson,
United States Trust Company of New York, Mortgage Trustee.

Frederick J. Moses,
By Sidney K. Jackson,
McCready Sykes,
By S. K. Jackson,
University Group.

Tenney, Harding, Sherman & Rogers,
Davis, Polk, Wardwell, Gardner & Reed,
and Edwin S. Sunderland and Thomas
O. G. Fitzgibbon,
Guaranty Trust Company of New York, Mortgage Trustee.

D'Ancona, Pflaum & Kohlsaat,
Wright, Gordon, Zachry & Parlin,
Chemical Bank & Trust Company,
Mortgage Trustee.

Winston, Strawn & Shaw,
Mitchell, Taylor, Caproni & Marsh, A. M. L.,
City Bank Farmers Trust Company,
Mortgage Trustee.

Walter S. Underwood, and Scott, Mac Leish & Falk,
Robert H. McRoberts and Bryan, Williams, Cave & McPheeters,
St. Louis Union Trust Company,
Mortgage Trustee.

Malcolm Mecartney,
Hodges, Reavis, Pantaleoni & Downey,
Protective Committee for 50 Year Bonds and William Church Osborn.

West & Eckhart, and Wm. A. McSwain.
Reese D. Alsop, and Hunt, Hill & Betts, (K. K. M.),
Terre Haute Group.

Bell, Boyd & Marshall,
Barnes, Myers & Price,
(By B. B. & M.),
Terre Haute Group.

Gann, Secord, Stead & McIntosh.
E. S. Ballard and Minier Sargent.
W. F. Peter,
W. F. Peter,
Terre Haute Group.

Cassels, Potter & Bentley,
Mayer, Meyer, Austrian & Platt,
Terre Haute Group.

Sabath, Perlman, Goodman & Rein,
Guggenheimer & Untermyer,
Anglo-Continentale Treuhand, A. G.

Edward R. Johnston & Albert K. Orschel,
Poppenhusen, Johnston, Thompson & Raymond,
Protective Committee for Preferred Stock.

McDonald & Richmond,
Thomas F. Murphy, Jack E. Bagon,
Imperial Trust Company Limited.
John Roth & Francis W. Keeler.

Carter, Ledyard & Milburn,
Manufacturers Trust Company.

Shulman, Shulman and Abrams,
Israel A. Abrams, Sol Abrams, Henrietta Chatmer & Charles J. Rosenbloom.

A. N. Whitlock and C. S. Jefferson,
Attorneys for Trustees.

F. C. Nicodemus, Jr., A. Perry Osborn,
Helen W. Munsert, Pierce & Greer,
Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.

S. C. Murray,
New York Central Railroad.

Theodore Schmidt and M. J. Haberkorn.
Pennsylvania Railroad.

Nicholson, Snyder, Chadwell & Fagerburg.
John A. Sheean
A. L. Skolnik.
H. E. Byram.
Carmody, Roth & Mayer.
Victor Greiff.
American Trust Company.
C. W. Crispell.
Union Labor Life Insurance Company.
Leon M. Reiter.
Mrs. Catherine Cornille.
Jeannette Bierhoff.
Jesse L. Cook,
Julius Weiss,
By Jesse L. Cook,
Independent Committee for Protection of Bondholders.

Gardner, Carton and Douglas,
For the Debtor.

Endorsed: Filed Mar. 11, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-seventh day of March, 1941, there was filed in the office of the Clerk of this Court, a second stipulation as to printing record on appeal, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, *Appellants,* *vs.* Group of Institutional Investors, etc., *et al.,* *Appellees.*	Nos. 7590, 7610-7617.

(And other appeals.)

SECOND STIPULATION AS TO USE OF ORIGINALS ON APPEAL.

In accordance with Rule 14, subparagraph 2, of the Rules of the Circuit Court of Appeals for the Seventh Circuit and upon informal advice from the Clerk of the Supreme Court of the United States, to counsel for the Debtor that it is proper and permissible for the record on any petition for certiorari in this cause to contain certain original records without printing thereof as provided hereafter:

I.

It is hereby stipulated by and between the parties in the above-entitled proceedings by their respective attorneys that the following documents, included in the record on appeal as certified by the District Court to the Circuit Court of Appeals and having been certified previously by the Interstate Commerce Commission to the District Court, shall be omitted from printing and shall not be considered for any purpose as part of the record on appeal:

Intervening petition of Anglo-Continentale Treuhand, A. G., filed August 7, 1935.

Intervening petition of Imperial Trust Company, Limited, filed August 7, 1935.

Intervening petition of Aetna Life Insurance Company of Hartford, Connecticut, et al., filed August 7, 1935.

Intervening petition of Union Pacific Railroad Company, filed August 7, 1935.

Intervening petition of Thomas E. Noonan and corrected order of the Commission, entered August 13, 1935.

Intervening petition of Alfred Wolstenholme, et al., and order of the Commission, entered October 10, 1936.

Intervening petition of the Railroad Credit Corporation and order of the Commission, entered April 2, 1937.

Intervening petition of Henry Morganthau, Director General of Railroads, filed June 6, 1937.

Consent for substitution of Jack E. Bagon, Esq., dated March 26, 1937.

Intervening petition of Illinois Commerce Commission and order of the Commission, entered March 23, 1938.

Intervening petition of Railroad Labor Executive Association and order of the Commission, dated November 17, 1938.

Intervening petition of State of Minnesota and order of the Commission, dated April 18, 1938.

II.

It is further stipulated that the following items shall not be printed in the printed record on appeal but that the originals thereof, included in the record on appeal as certified by the District Court to the Circuit Court of Appeals for the Seventh Circuit, shall be for all purposes part of said record on appeal and a part of the record on any petition for certiorari in the Supreme Court of the United States that may be filed by any party in this cause and may be considered and referred to by all parties as fully as if said originals were printed; and an order shall be entered by the Circuit Court of Appeals for the Seventh Circuit approving this stipulation and authorizing said originals to be a part of the record on appeal for all purposes without printing thereof:

Petition of the Debtor, filed September 13, 1937, requesting an adjournment of further hearing.

Motion of Group of Institutional Investors, filed September 24, 1937.

Petition of Guaranty Trust Company of New York, et al., Trustees, for adjournment of hearing, filed March 7, 1938.

Petition of Protective Committee for Holders of Pre-

ferred Stock requesting postponement of hearing, filed October 26, 1938.

Answer of Institutional Investors, filed November 7, 1938.

Petition of Protective Committee for Holders of Preferred Stock, filed October 2, 1939.

Answer of Mutual Savings Bank Group, filed October 9, 1939.

Reply of Institutional Investors, filed October 9, 1939.

Petition of Israel A. Abrams, et al., for modification of Commission report, filed April 1, 1940.

Petition of United States Trust Company of New York for rehearing filed April 11, 1940.

Petition of St. Louis Trust Company, et al., Trustees, for reconsideration and modification, filed April 12, 1940.

Petition of Institutional Investors for supplemental report and modification, filed April 12, 1940.

Petition of Guaranty Trust Company of New York, et al., Trustees, for modification of report and order, filed April 12, 1940.

Petition of the National City Bank of New York, et al., Trustees, for modification, filed April 12, 1940.

Petition of Mutual Savings Bank Group for modification of order, filed April 12, 1940.

Petition of Lemuel H. McHenry, et al., for modification of order, filed April 12, 1940.

Exceptions of Protective Committee for Holders of Preferred Stock filed April 12, 1940.

Brief of the National City Bank of New York, et al., Trustees, filed April 20, 1940.

Reply of Group of Institutional Investors, filed April 22, 1940.

Exhibit of City Bank Farmers Trust Company, as Trustee, filed April 22, 1940.

Reply of Reconstruction Finance Corporation, filed April 22, 1940.

Reply of Mutual Savings Bank Group, filed April 22, 1940.

Intervening petition of Guaranty Trust Company of New York, as Trustees, filed August 5, 1935.

Intervening petition of United States Trust Company of New York, filed August 5, 1935.

Intervening petition of Illinois State Trust Company, et al., Trustees, and order of the Commission, entered February 20, 1936.

Intervening petition of Israel A. Abrams, filed August 7, 1935.

Intervening petition of James D. Collyer, et al., and order of the Commission, entered November 21, 1935.

Intervening petition of City Bank Farmers Trust Company as Successor Trustee, and order of the Commission, entered September 25, 1936.

Intervening petition of Reconstruction Finance Corporation and order of the Commission, filed January 5, 1937.

Intervening petition of National City Bank of New York, et al., filed June 6, 1937.

Intervening petition of Chemical Bank and Trust Company, as Trustee, filed September 20, 1937.

Intervening petition of Victor Greiff and order of the Commission, entered January 11, 1938.

Intervening petition of Protective Committee for Holders of Preferred Stock, filed February 1, 1938.

Intervening petition of William Church Osborne, filed February 1, 1938.

Intervening petition of Mutual Savings Bank Group Committee, filed February 1, 1938.

Intervening petition of E. Stanley Glines, et al., and order of the Commission, entered December 6, 1938.

Intervening petition of Lemuel H. McHenry, et al., and order of the Commission, entered January 25, 1939.

Exceptions of Israel A. Abrams, et al., filed November 25, 1938.

Exceptions of Victor Greiff, filed December 29, 1938.

Exceptions of Independent Committee, filed December 29, 1938.

Brief of Debtor, filed December 30, 1938.

Exceptions of National City Bank, December 30, 1938.

Exceptions of United States Trust Company, filed December 30, 1938.

Exceptions of Anglo-Continentale, filed December 30, 1938.

Exceptions of Guaranty Trust Company, filed December 30, 1938.

Exceptions of William Church Osborne, filed December 30, 1938.

Exceptions of Institutional Investors, filed December 30, 1938.

Exceptions of City Bank Farmers Trust Company, filed December 30, 1938.

Exceptions of Reconstruction Finance Corporation, filed December 30, 1938.

Exceptions of Protective Committee for Preferred Stockholders, filed December 30, 1938.

Exceptions of E. Stanley Glines, et al., filed January 3, 1939.

Exceptions of Imperial Trust Company, filed January 14, 1939.

Exceptions of St. Louis Union Trust Company, filed January 25, 1939.

Exceptions of Group of Institutional Investors, filed January 14, 1939.

Exceptions of Mutual Savings Bank Committee, filed January 14, 1939.

Exceptions of E. Stanley Glines, filed January 14, 1939.

Reply of Protective Committee for Preferred Stockholders, filed January 16, 1939.

III.

It is further stipulated that none of the bonds on appeal shall be printed, and that the lists of attorneys attached to the various proofs of service and notices shall be omitted from printing, such omission to be indicated by the words "Proof of Service Attached."

Lee Walker,
C. M. Clay,
Reconstruction Finance Corporation.

Sidley, McPherson, Austin & Burgess,
Institutional Group Committee.

Albert Y. Osborn for Charles W. Paltzer,
Oliver & Donnally,
Mutual Savings Bank Group Committee.

Montgomery, Hart, Pritchard & Herriott,
C. H. R.,
Shearman & Sterling, C. H. R.,
National City Bank of New York and William W. Hoffman, Mortgage Trustees.

Wilson & McIlvaine,
By S. K. Jackson,
Stewart & Shearer,
By S. K. Jackson,
United States Trust Company of New York, Mortgage Trustee.

Frederick J. Moses,
By Sidney K. Jackson,
Wilson & McIlvaine,
By S. K. Jackson,
University Group.

Tenney, Harding, Sherman & Rogers,
Davis, Polk, Wardwell, Gardner & Reed and Edwin S. Sunderland and Thomas O. G. Fitzgibbon,
Guaranty Trust Company of New York, Mortgage Trustee.

D'Ancona, Pflaum & Kohlsaat,
Wright, Gordon, Zachry & Parlin,
Chemical Bank & Trust Company, Mortgage Trustee.

Winston, Strawn & Shaw,
Mitchell, Taylor, Capron & Marsh, A. M. L.,
City Bank Farmers Trust Company, Mortgage Trustee.

Walter S. Underwood, and Scott, Mac Leish & Falk,
Robert H. McRoberts and Bryan, Williams, Cave & McPheeters,
St. Louis Union Trust Company, Mortgage Trustee.

Malcolm Mecartney,
Hodges, Reavis, Pantaleoni & Downey,
Protective Committee for 50 Year Bonds and William Church Osborn.

West & Eckhart, and Wm. A. McSwain,
Reese D. Alsop, and Hunt, Hill & Betts,
Terre Haute Group.

Bell, Boyd & Marshall,
Barnes, Myers & Price,
Terre Haute Group.

E. S. Ballard and Minier Sargent,
W. F. Peter,
Terre Haute Group.

William H. King and Wm. I. Warfield III,
Cassels, Potter & Bentley,
Irvin Goldsmith,
Mayer, Meyer, Austrian & Platt,
Terre Haute Group.

John H. Boord,
Gann, Secord, Stead & McIntosh.
Edward R. Johnston & Albert K. Orschel,
Protective Committee for Preferred Stock.

Meyer Abrams,
Israel A. Abrams, Sol Abrams, Henrietta Chatmer & Charles J. Rosenbloom.

A. N. Whitlock and C. S. Jefferson,
Attorneys for Trustees.

F. C. Nicodemus, Jr., A. Perry Osborn, Henry A. Gardner, Gardner, Carton & Douglas, Helen W. Munsert, Pierce & Greer,
Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.

Jesse L. Cook,
Julius Weiss,
Independent Committee for Protection of Bondholders.

Endorsed: Filed Mar. 27, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the seventh day of April, 1941, the following further proceedings were had and entered of record, to-wit:

Monday, April 7, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company, *Appellant*,

7590 *vs.*

Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the petition of appellee Group of Institutional Investors, Holders of Securities of the Debtor, the motion of appellee Interstate Commerce Commission, and the motion of appellee Reconstruction Finance Corporation, to vacate the order entered by this Court in this cause on February 18, 1941, and to dissolve the stay of the submission of the plan of reorganization by the Interstate Commerce Commission to the creditors, be, and they are hereby, denied, without prejudice to the right to renew same at the hearing of this cause on the merits.

And afterwards, to-wit: On the seventeenth day of April, 1941, there was filed in the office of the Clerk of this Court, a third stipulation as to printing of record on appeal, which said stipulation is in the words nad figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.	No. 60463. Circuit Court of Appeals Nos. 7590, 7610-7617.

THIRD STIPULATION TO OMIT CERTAIN MATTERS FROM THE PRINTED TRANSCRIPT ON APPEAL AND AS TO USE OF ORIGINALS.

In accordance with Rule 14, Subdivision 2, of the Rules of the Circuit Court of Appeals for the Seventh Circuit, and upon informal advice from the Clerk of the Supreme Court of the United States, to counsel for the Chicago, Terre Haute & Southeastern Railway Company First Lien Bondholders' Committee, special intervenors herein, appellants, that it is proper and permissible for the record on any petition for certiorari in this cause to contain certain original records without printing thereof as hereinafter provided.

It Is Hereby Stipulated by and between the parties in the above entitled proceeding by their respective attorneys that the following matter, certified to the Clerk of the

United States Circuit Court of Appeals for the Seventh Circuit, as part of the record on appeal herein, need not be printed, but may be referred to upon the appeals herein as though it were, and may be made part of the record upon any petition for certiorari in this cause without being printed, and be referred to by counsel in their briefs as though it were printed and a part of the printed transcript of record; and an order shall be entered by the Circuit Court of Appeals for the Seventh Circuit approving this stipulation and authorizing said matter to be a part of the record on appeal for all purposes without printing thereof to wit:

Petition of Anglo-Continentale Treuhand, A. G. to intervene, filed July 12, 1935.

Answer of Debtor to petition of Anglo-Continentale, filed July 17, 1935.

Amended and supplemental petition of Anglo-Continentale, filed July 30, 1935.

Answer of Debtor to amended petition of Anglo-Continentale, filed August 24, 1935.

Motion by City Bank Farmers Trust Co. to impound income, filed October 14, 1935.

Affidavit of Ralph E. Morton, filed October 14, 1935.

Order granting leave to Anglo-Continentale to intervene, entered October 17, 1935.

Suggestions of Anglo-Continentale in connection with motion of City Bank Farmers Trust Co., filed November 1, 1935.

Petition of Debtor for authority to pay interest on Milwaukee & Northern Railroad Co. bonds, filed November 14, 1935.

Order authorizing payment of interest on Milwaukee & Northern Railroad Co. bonds, entered November 25, 1935.

Petition of Trustees for authority to pay interest, filed May 16, 1936.

Order authorizing Trustees to pay interest, entered May 26, 1936.

Petition of Trustees for authority to pay interest, filed November 16, 1936.

Order authorizing Trustees to pay interest, entered November 27, 1936.

Petition of trustees for authority to pay interest, filed May 14, 1937.

Order authorizing Trustees to pay interest entered May 24, 1937.

Petition of Trustees for authority to pay interest, filed November 16, 1937.

Order authorizing Trustees to pay interest, entered November 27, 1937.

Petition of Trustees for authority to pay Anglo-Continentale certain sums of money, filed December 2, 1937.

Order authorizing Trustees to pay holders of certain bonds, entered December 3, 1937.

Order granting leave to Anglo-Contientale Treuhand, A. G. to intervene, entered September 4, 1940.

Order granting leave to University Group to intervene, entered September 4, 1940.

Proof of notice given parties of entry of decree, filed November 18, 1940.

Petition of Fifty-Year Mortgage Trustees for order granting leave to intervene, filed August 28, 1935.

Order allowing Fifty-Year Mortgage Trustee to file petition of intervention, entered August 26, 1935.

Petition of Fifty-Year Mortgage Trustees for intervention and for impounding of income, filed August 26, 1935.

Order granting Fifty-Year Mortgage Trustees leave to intervene, entered August 26, 1935.

Verified statement made by Guaranty Trust Company of New York, as Corporate Trustee, pursuant to the provisions of sub-division (a) of Paragraph Second of Order No. 2 filed prior to September 30, 1935.

Petition for authority to apply to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of operation over 63.5 miles of railroad in Michigan, filed November 19, 1935.

Order authorizing application to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of operation over 63.5 miles of railroad in Michigan, entered November 19, 1935.

Order authorizing Trustees to join with Chicago Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago Union Station Company, entered March 7, 1936.

Order authorizing Trustees to execute agreements for creating of Equipment Trust, Series "O", and to issue and sell Equipment Trust Certificates, entered April 3, 1936.

Order authorizing Trustees to join with Chicago Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago Union Station Company, entered August 5, 1936.

Petition for authority to apply to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 14.23 miles of railroad in Washington, filed November 30, 1936.

Order authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul & Pacific Railroad Equipment Trust Certificates, Series "P", entered December 28, 1936.

Petition for authority to apply to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 0.97 miles and 14.97 miles of railroad in Montana, filed January 12, 1937.

Order authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "Q", entered March 12, 1937.

Petition for authority to apply to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 3.1 miles of railroad in Iowa, filed March 26, 1937.

Order authorizing application to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 3.1 miles of railroad in Iowa, entered March 26, 1937.

Petition for authority to apply to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 2.01 miles of railroad in Washington, filed March 26, 1937.

Order authorizing application to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 2.01 miles of railroad in Washington, entered March 26, 1937.

Order authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "R", entered August 31, 1937.

Order authorizing Trustee to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "S", entered March 28, 1938.

Order authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "T", entered May 3, 1939.

Petition for authority to apply to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of approximately 1.5 miles of railroad in Wisconsin, filed June 13, 1939.

Order authorizing application to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of approximately 1.5 miles of railroad in Wisconsin, entered June 13, 1939.

Petition for authority to apply to the Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 5.19 miles of railroad in Indiana, filed September 25, 1939.

Order authorizing application to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 5.19 miles of railroad in Indiana, entered September 25, 1939.

Order authorizing Trustees to issue and sell Chicago, Milwaukee, St. Paul and Pacific Railroad Equipment Trust Certificates, Series "U", entered December 5, 1939.

Order authorizing Trustees to join with Chicago, Union Station Company and its other proprietary owners in a plan of refinancing certain outstanding bonds of Chicago, Union Station Company, entered March 15, 1940.

Petition of Protective Committee for the Holders of 50-Year Five Per cent Mortgage Gold Bonds, Series A, due February 1, 1975, for order granting leave to intervene in proceeding before the District Court, filed May 3, 1940.

Order granting protective Committee as above leave to intervene, entered May 3, 1940.

Petition for authority to apply to Interstate Commerce Commission for certificate of public convenience and

necessity authorizing abandonment of 29.60 miles of railroad in South Dakota, filed November 22, 1940.

Order authorizing application to Interstate Commerce Commission for certificate of public convenience and necessity authorizing abandonment of 29.60 miles of railroad in South Dakota, entered November 22, 1940.

Petition for Order No. 17, being petition of City Bank Farmers Trust Company as Successor Trustee for leave to intervene, filed August 22, 1935.

Order granting City Bank Farmers Trust Company leave to intervene, entered August 26, 1935.

Order assuming jurisdiction of New York Complaint, entered October 8, 1935.

Order authorizing bondholders to become parties to extension agreements, entered February 25, 1938.

Petition for Order No. 413, being petition of City Bank Farmers Trust Company for impounding of income, filed October 13, 1938.

Order on petition of City Bank Farmers Trust Company, entered December 1, 1938.

Petition for Order No. 458 being petition of Trustees for authority to pay interest, filed February 10, 1939.

Order authorizing Trustees to pay interest, entered February 21, 1939.

Petition for Order No. 555, being petition of Trustees for authority to pay interest, filed September 25, 1939.

Order authorizing Trustees to pay interest, entered October 10, 1939.

Petition for Order No. 620 being petition of Trustees for authority to pay interest, filed January 30, 1940.

Order authorizing Trustees to pay interest, entered February 9, 1940.

Intervening Petition of E. Stanley Glines et al. filed with the Interstate Commerce Commission December 6, 1938.

Dated, April 3, 1941.

Lee Walker,
C. M. Clay,
Reconstruction Finance Corporation.

Sidley, McPherson, Austin & Burgess,
Institutional Group Committee.

Oliver & Donnally,
Mutual Savings Bank Group Committee.

Montgomery, Hart, Pritchard & Herriott, C. H. R.,
Shearman & Sterling, C. H. R.,
National City Bank of New York and William W. Hoffman, Mortgage Trustees.

Wilson & McIlvaine,
Stewart & Shearer,
United States Trust Company of New York, Mortgage Trustee.

Frederick J. Moses,
McCready Sykes,
University Group.

Tenney, Harding, Sherman & Rogers, R. R. L.,
Davis, Polk, Wardwell, Gardner & Reed and Edwin S. Sunderland and Thomas O. G. Fitzgibbon,
Guaranty Trust Company of New York and Merrell P. Callaway. Mortgage Trustee.

D'Ancona, Pflaum & Kohlsaat,
Wright, Gordon, Zachry & Parlin,
Chemical Bank & Trust Company, Mortgage Trustee.

Winston, Strawn & Shaw,
Mitchell, Taylor, Capron & Marsh, A. M. L.,
City Bank Farmers Trust Company, Mortgage Trustee.

Walter S. Underwood, and Scott, Mac Leish & Falk,
Robert H. McRoberts and Bryan, Williams, Cave & McPheeters,
St. Louis Union Trust Company. Mortgage Trustee.

Malcolm Mecartney,
Hodges, Reavis, Pantaleoni & Downey,
Protective Committee for 50 Year Bonds.

West & Eckhart, and Wm. A. McSwain,
Reese D. Alsop, and Hunt, Hill & Betts,
Terre Haute Group.
Bell, Boyd & Marshall,
Barnes, Myers & Price,
Terre Haute Group.
E. S. Ballard and Minier Sargent,
W. F. Peter,
Terre Haute Group.
William H. King and William I. Warfield, III,
Cassels, Potter & Bentley,
Irving Goldsmith,
Mayer, Meyer, Austrian & Platt,
Terre Haute Group.
John N. Boord, Gann, Secord, Stead & McIntosh,
Edward R. Johnston & Albert K. Orschel,
Protective Committee for Preferred Stock.
McDonald & Richmond,
McDonald & Richmond,
McDonald & Richmond,
Thomas F. Murphy, Jack E. Bagon,
Imperial Trust Company Limited, John Roth & Francis W. Keeler.
Carter, Ledyard & Milburn,
Manufacturers Trust Company.
Meyer Abrams,
Meyer Abrams,
Israel A. Abrams, Sol Abrams, Henrietta Chatmer & Charles J. Rosenbloom.
A. N. Whitlock and C. S. Jefferson,
Attorneys for Trustees.
F. C. Nicodemus, Jr., A. Perry Osborn,
Henry A. Gardner and Helen W. Munsert, Pierce & Greer,
Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.
Jesse L. Cook,
Julius Weiss,
By Jesse L. Cook,
Independent Committee for Protection of Bondholders.

Endorsed: Filed April 17, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the eighteenth day of June, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, June 18, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.

7590 7610 thru 7617	In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.	Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the petitions and motion of counsel for appellees Institutional Groups, Reconstruction Finance Corporation, and Interstate Commerce Commission, for dissolution of the stay of submission of the plan of reorganization be, and they are hereby, denied, without prejudice to the right to reconsider the said petitions and motion in connection with the hearing on the merits of the appeals.

And afterwards, to-wit: On the fourth day of December, 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term and Session, 1941.

In the Matter of
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R. R. CO.,
Debtor.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.,
Appellant,
7590 *vs.*
GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

UNION TRUST CO. and ILLINOIS STATE TRUST CO., as Trustees, et al.,
Appellants,
7610 *vs.*
GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

ISRAEL A. ABRAMS, et al.,
Appellants,
7611 *vs.*
GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

H. C. ORTON, et al., etc.,
Appellants,
7612 *vs.*
GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

GUARANTY TRUST CO. OF NEW YORK, et al., etc.,
Appellants,
7613 *vs.*
GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

CHICAGO, TERRE HAUTE & SOUTHEASTERN RY. CO., Income Mortgage Bondholders' Committees, et al.,
Appellants,

7614 vs.

GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

UNITED STATES TRUST CO. OF NEW YORK, as Trustee, etc.,
Appellant,

7615 vs.

GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

TRUSTEES OF PRINCETON UNIVERSITY, et al., etc.,
Appellants,

7616 vs.

GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

E. STANLEY GLINES, et al., etc.,
Appellants,

7617 vs.

GROUP OF INSTITUTIONAL INVESTORS, etc., et al.,
Appellees.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,
Appellant,

7686 vs.

HENRY A. SCANDRETT, WALTER J. CUMMINGS and GEORGE I. HAIGHT, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, et al.,
Appellees.

December 4, 1941.

Before EVANS and KERNER, *Circuit Judges*, and LINDLEY, *District Judge*.

EVANS, *Circuit Judge*. These numerous appeals, save one, present attacks on a proposed plan of reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad,

hereinafter called the Debtor. Errors are assigned, which may be divided into two groups, legal and factual. Both the I. C. C. and the District Court have approved the proposed plan of reorganization. As yet, however, the plan has not been submitted to the creditors.

All parties seemingly agree that there must be a reorganization of the Debtor. The crux of the criticisms of the different groups of bondholders, represented by the various appellants, is that the old mortgage bondholders are not given enough securities in the new company, and to meet this objection, it is argued there must be a larger mortgage indebtedness placed on the new company. Larger mortgages will permit of distribution of more bonds to the present bondholders. The fact that they will be of less value is ignored.

At the bottom of all the criticisms of the new plan is the appraisal of old securities, and the allocation of the new securities to such old security holders. The legal questions are raised to prevent the present plan from being approved and made effective, in case we are satisfied that the plan is fair and equitable.

Generally speaking, the objecting bondholders contend that their securities were undervalued in the reorganization and that some other mortgage on another section of the property, was overvalued.

Because the factual and legal questions are so interrelated, it is necessary to make a somewhat lengthy statement of facts, even though abbreviated because of the full and complete story found in the report of the I. C. C., 239 I. C. C. R. 485, and 240 I. C. C. R. 257, and in the decision of Judge Igoe of the District Court in 36 F. Supp. 193.

The Debtor is a large railroad system, operating 9,906 miles of solely owned track, through twelve states. It has several sections, each being the basis of a separate mortgage indebtedness. Chief among these sections are the western half (from Mobridge, South Dakota, to the Pacific Ocean) acquired in 1909; the eastern half (the main part of the road); the Gary line, which joined Debtor in 1922; the Milwaukee and Northern, acquired in '93; and the Terre Haute, included by virtue of a 999 year lease, executed July 1, 1922.

Debtor was born of the Federal equity receivership of

the former Chicago, Milwaukee & St. Paul Railroad, which terminated in January, 1928. There, as here, the mortgage trustees and groups of bondholders, demanded new securities in amounts similar to those outstanding, the load of which the predecessor debtor could not carry.

The creditors there took a position which ignored the long view future of the Debtor, ignored its public obligation character and sought a reorganization which served only the demands of the hour, which were met at the sacrifice of the future.

The court, unfortunately, was helpless. So was the I. C. C., which protestingly approved the plan which the narrow-visioned mortgage trustees and their advisers, set up. The present proceedings are the direct result of the ill-advised 1928 plan of reorganization. The road was forced to seek the aid of Section 77 of the Railroad Reorganization Bankruptcy Act shortly after it was made available.

Debtor submitted, with its petition, a plan, which was moratorium in nature. The doors of the I. C. C. were open and the Commission ready and anxious to go forward with its reorganization work, but no effort was made by any of the groups of investors, nor by the debtor, to formulate a reorganization plan until many months had passed. The situation seemed hopeless. Finally, the Institutional Investors, one of the Groups here interested, submitted a plan. It represented much thought and study. Its plan was a forerunner to a more complete one submitted by the I. C. C. Hearings were had and closed, only to be reopened and further hearings had. Modifications of the I. C. C. plan were made, and it, as modified, was finally approved by the I. C. C. It was later presented to the District Court, counsel were heard for and against the plan, and finally the Court approved it. These appeals followed.

The facts are complicated and, in the hope that they might be more clearly and concisely presented, we have tabulated some of them in the form of a chart herewith set forth.

Name of Security and Obligation	Amounts Issued and outstanding	A. Date Issued B. Date Matured	1. Int. rate 2. Int. due 12/31/38 3. Annual Int.	Security is lien on	First Mortgage Bonds	General Mortgage 4½% Bonds		5% Preferred Stock	Common Stock No-par Value Shares
						Series A	Series B convertible		
50 year mortgage 5s of '75	$106,395,096 outstanding	A. 2/2/1900 B. 2/1/75	1. 5% 2. $20,835,706	Just behind lien of 1st & Refunding Mtg., i.e., is a 2, 3, 4 lien on property on which refunding is 1, 2, 3 lien. Practically, it may be considered a 1st lien on western lines and 2 lien on eastern line.	(4% except Terre Haute)		15% 19,084,621	60% 76,338,481	25% 318,077
Gen. Mtge. Bonds A, 4s B, 3½s C, 4½s D, 4½s E, 4½s	$150,000,000 issued 48,241,000 8,950,000 42,597,000 24,000,000 15,000,000 137,788,000 in public hands 11,212 pledged R. F. C.	B. 1989	2. $5,653,090 920,211 5,652,191 3,217,320 2,137,381 3) $5,952,225	Lien on 6,054.88 miles of track, i.e., eastern line and much equipment.	(25%) 13,473,523 2,467,553 12,062,298 6,804,330 4,284,345	(35%) 18,862,931 3,454,574 16,887,217 9,526,062 5,998,083	(20%) 10,778,818 1,974,042 9,649,838 5,443,464 3,427,476	(20%) 10,778,818 1,974,042 9,649,838 5,443,464 3,427,476	
Convertible Adjustment Mtg., 5s, 2000	$182,873,693 outstanding.	A. 2/2/1925—secured in 1928 reorganization.	2) $79,550,655	Lien just behind 50 yr. mtg. on all prop. on which 50 yr. mtg. is lien, i.e., 3, 4, 5 lien on property on which 50 yr. mtg. has 2, 3, 4 lien.					1,749,492
C. M. & Gary 1st Mtg. 5% 50 yr. (joined debtor in Jan. 1922; debtor guaranteed principal of $3,000,000 and interest.)	$5,798,000 issued, $98,000 cancelled, $3,000,000 in hands of public, $2,700,000 pledged under 1st and Refunding.	A. 4/1/1908 B. 1948	2) $562,500	82.85 miles of track in Illinois.				75% 2,671,875	25% 8,906, ½

Opinion by Evans J. 2801

Name of Security and Obligation	Amounts Issued and outstanding	A. Date Issued B. Date Matured	1. Int. rate 2. Int. due 12/31/38 3. Annual Int.	Security is lien on	What Commission Gives to Security				
					First Mortgage Bonds	General Mortgage 4½% Bonds		5% Preferred Stock	Common Stock No-par Value Shares
						Series A	Series B convertible		
. M. 1st & Refunding.	$9,866,000 issued, $8,923,000 outstanding, pledged to secure Govt. $943,000 in treasury.	A. 2/2/25 B. 6/1/43	1) 6%	1st lien on 3,435 miles (western lines); 2nd lien on all prop. on which Gen. Mtg. and Belling. mtg. are 1st mtg. 3rd lien on prop. on which Mil. & Nor. Cons. is second lien.					
erre Haute Lease to Debtor 7/1/22 for 999 yrs., debtor to pay prin. of bonds and int. taxes.	$21,929,000 issued 250,000 Bedford 7,287,000 So. Ind. 8,056,000 Refund. 6,336,000 Terre Haute	5s '38 4s '51 5s '60 5s '60	Int. pd. to date; Bedford prin. in default. Annual int.; $1,023,580.	Bedford, lien on 4.66 miles. So. Ind. lien on 240.92 miles. Terre H. lien on 115.17 miles. Terre Haute 2nd lien on above.	250,000 7,287,000 8,056,000 6,336,000	2.75% fixed 1.5% contin	interest gent interes	t.	
lil. & Northern 1st 4½s '39	$2,155,000 issued $2,117,000 in public, 38,000 pledged 1st refunding mtg.	A) 6/10/1880 B) 6/1/10 extended to 6/10/39	2) $103,204	125.74 miles track in Wis.	70% 1,554,143	30% 666,061			
il. & No. Consolidated 4½% bonds.	A) $5,092,000 issued B) $5,072,000 public 20,000 pledged. 1st refunding mtg.	A) 2/11/84 B) 5/1/34, extended 6/1/39	2) $247,260	1st lien 266.56 miles in Wis. & Mich. 2nd lien 125.7 miles on which Mil. & Nor. 1st lien.	25% 1,329,815	35% 1,861,741	20% 1,063,852	20% 1,063,852	

We are dealing with facts and the facts are figures.

It is at once apparent that the Commission was confronted by a stupendous task. Its determination to recapitalize Debtor on a system-wide security basis increased the difficulties. The recapitalization of the Debtor at a much lower figure (appellants call it a "drastic cut") indicates a candid, realistic approach, but it was certain to arouse opposition.

It was this cut in the capitalization of the new debtor which is the real basis of the attacks on the plan. It has awakened much of the dissatisfaction to the plan. Isolated bondholders, or groups of holders of different issues, join in the assault. The basis of all criticisms, however, is the same. Each bondholder places a higher value upon his own security than did the Commission. Each likewise places a lower value upon the securities held by other and different bondholders, than did the Commission. Each gives a value to the new securities lower than the value of the bonds he is asked to surrender. The new bonds are described as ephemeral, worthless, or of conjectural value. In attempting to ascertain the value of their own security, they look at the value placed upon other securities, and out of their prejudices, draw harsh conclusions. They convince themselves that there is favoritism in the apportionment of the new securities.

One group attributes the road's deficits to losses incurred on sections other than those covered by the mortgages of the complaining bondholders. Another group stresses reproduction cost of their division. Still another group asks us to ignore original cost, mileage, business produced, etc., and concentrate our attention on earnings. There is but one consistency in the position of all the dissatisfied groups. Each will be satisfied if its percentage of the new securities be increased, and the percentage allotted to other bondholder groups is reduced. Each holds in reserve a big stick (legal objections), which it wields threateningly, if a different and better allotment (which means larger bond issues under the new plan) is not made.

This chart, which tells its own story, shows that there are six divisions (eastern, western, Terre Haute, Gary, Milwaukee & Northern, and Bellingham), each of which is covered by a first lien bond issue and several junior mortgages.

It also shows the Debtor's capital structure to be as follows: 1,174,060 shares, of no par value, common stock, and $119,307,300 of 5% preferred stock, represented by 1,193,073 shares. Under the new plan this stock is wiped out. Nothing was allowed to the holders of either common or preferred stock. The I. C. C. found that the Debtor's assets were not equal to the aggregate of its secured and unsecured debts.

The secured obligations were:

Debtor's First and Refunding Mortgage of $9,866,000, of which $8,923,000 (all the outstanding) is pledged to secure the R. F. C. and other Government loans. This lien plays a negligible part in the controversy although the lien covers a large part of the Debtor's property. It is a first lien on the western lines, a second lien on the eastern lines, and a second lien upon other branches. No challenge of the plan is made so far as it affects this mortgage.

Another mortgage is known as the 5's of '75, a fifty year mortgage of which $106,395,096 is outstanding. Accrued interest to December, 1938, was $20,835,706. Save for the small First and Refunding Mortgage, it is a first lien on the western division.

Another issue is known as the Adjustment Bonds of which $182,873,693 are outstanding. The accrued interest thereon is approximately $80,000,000. This issue grew out of the 1928 equity receivership. This mortgage is just behind the Fifty Year Mortgage, and a third, fourth, and fifth mortgage on the property on which the 5's of '75 are a second, third, and fourth lien.

The so-called General Mortgage is an issue of $150,000,000 and is a first lien on the eastern half of the road. It also is a lien on much equipment. This mortgage secures five series of notes. The rate of interest varies from 3½ to 4½%. Approximately $137,788,000 is held by the public, while a small amount secures loans by the Government. This mortgage covers the most valuable part of the entire system and its treatment in the reorganization is the subject of serious attack.

The Gary Mortgage covers 82.85 miles of track in Illinois. $5,798,000 was originally issued, of which $98,000 has been cancelled. Of the amount outstanding $3,000,000 is in the hands of the public, and $2,700,000 is pledged under the First and Refunding Mortgage heretofore referred to. This division is called a coal-carrying line.

Two other mortgages are known as the Milwaukee and Northern Company issues, the First Mortgage and the Consolidated Mortgage. Of the former $2,117,000 are in the hands of the public, and of the latter, $5,072,000 are in the public's hands. $38,000 and $20,000 of these issues respectively, are pledged to secure the First and Refunding Mortgage.

The Bellingham Bay Co. Mortgage amounts to $301,000 and is pledged to the R. F. C.

The Terre Haute mortgages, four in number of combined face values of $21,929,000, are a lien on the branch known as the Terre Haute lines, and as to the part this line and this mortgage play in the reorganization, the controversy is rich in intensity and fact conflicts. This mortgage existed before the railroad was acquired by the Debtor, and the report of the I. C. C. upon the value of these bonds and the circumstances under which the road was acquired, have given this transaction a malodorous reputation.

As to the disposition of this branch, the I. C. C. deliberated over the wisdom of two proposals—one contemplated cancelling the lease; the other retained the property, which necessitated the inclusion of the mortgage in the reorganization. When this lease was acquired, the Debtor agreed to pay the lessor's mortgage indebtedness. This division brings Indiana coal to Chicago for use by the Debtor on its other divisions.

In addition there are a few minor items of indebtedness such as: Equipment trust certificates, $33,322,999; loan from the R. F. C., $10,780,762.50; Railroad Credit Corporation loan, $2,995,312; General American Tank Car sublease liability, $822,119.54; unsecured claims approximately, $500,000. They are not exactly small, but over their disposition little or no controversy exists.

Under the approved plan of reorganization there were $34,506,999 of liens, undisturbed or extended. They are equipment obligations and a secured bank note above referred to. There is no objection to the plan so far as it disposes of these two items.

In the reorganization, a first mortgage issue was provided in the sum of $80,852,171. Of this sum, $58,923,171 draws interest at 4%, the balance, $21,929,000 is to pay off the Terre Haute obligations and draws interest at 4¼%, of which 2¾% is a fixed charge while an added 1½% interest charge is contingent.

There follows a General 4½% Mortgage covering two series, A and B, aggregating $108,678,780. Series A covers $57,256,669, and Series B, $51,422,111. The interest on both bonds is contingent. In case of earnings Series A is prior to Series B. Series A Bonds mature Jan. 1, 2014. Series B matures Jan. 1, 2039. There is also to be issued 5% preferred stock of the amount of $111,347,846, and 2,131,475¼ shares of no par value common stock.

The Terre Haute bonds are to be paid in full, but with lower rate of interest, a part of which is contingent.

For the Milwaukee & Northern First Mortgage bonds, 70% is to be paid in First Mortgage, and 30% in Series A Mortgage; and the Milwaukee & Northern Consolidated Mortgage is to be paid, 25% in First Mortgage, 35% Series A, 20% Series B, and 20% preferred stock.

The old General Mortgage bonds are to be paid 25% in First Mortgage Bonds, 35% in Series A General Mortgage, 20% in Series B General Mortgage, 20% in preferred stock.

The 5's of '75 are to be paid in 15% of Series B convertible, 60% in preferred stock, 25% in common stock.

The Gary First Mortgage bonds are to be paid in 75% preferred stock and 25% in common stock.

The unsecured claims of $500,000 are to be paid by the issuance of 15,837 shares of common stock.

Five million dollars of First Mortgage bonds are to be issued as new money bonds.

The plan of reorganization also calls for the creation of a so-called Additions and Betterments Fund. Annually, out of the available net income, not less than $2,500,000 is to be set aside for so-called Additions and Betterments. To the extent that expenditures are so provided for or reimbursed out of the Additions and Betterments Fund, the new company is denied the right to issue any bonds or other evidences of indebtedness or any stock, ranking as to either assets or dividends, in priority to, or on a parity with, the new preferred stock.

This fund is assailed by several of the appellants, and the principal ground is that it is larger than necessary. Inasmuch as the Commission first determined the amount of bonds and capital stock which the road could carry and meet all of its obligations, which determination was meas-

ured by its available net income, it was argued that the reduction of this income by $2,500,000 resulted in an unnecessary reduction in the amount of the indebtedness and in the amount of available capital stock of the new company.

At once observable, the fairness of the allocations involves factual issues. While question-arousing arguments have been advanced for and against the plan, which invite lengthy discussion by us, the outstanding, unchallenged fact is that the conclusions of the I. C. C., approved by the District Court, are entitled to great weight, and we are hardly justified in substituting our judgment for that of those tribunals, save where clearly satisfied that their judgment is erroneous, or is based upon incorrect assumptions, or where an incorrect rule or principle is applied. In making this observation, we are not unmindful of the Los Angeles Lumber case to the effect that the fairness of any reorganization plan presents a legal question and one we cannot and should not evade or avoid.

True, their findings are based upon figures found in the Debtor's reports, and there is no advantage which the original fact-finding body enjoys because it first saw the figures. Unlike those cases where the fact finder sees and hears human witnesses, and the latter's credibility is involved, the cold figures found in the reports, showing the volume of business, costs of operation, and earnings, tell the same story to all.

That tale is replete with the sad account of losses and more losses, of ever-increasing cost of operation, of transfer of business to trucks and busses, of increase in labor costs and in taxes. Taking the last decade of operation as our study, there is small room for dispute. There can be no serious or intelligent contention that this railroad can support its present financial set-up.* That all interest

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*No dividends have been paid on common or preferred stock in over five years. We may take judicial notice of the fact that neither stock has substantial market value and has not for five years.

On the Adjustment Mortgage bond the unpaid interest is, to date, more than half as large as the principal. As of December 31, 1938, the unpaid cumulative interest was approximately $80,000,000. The unpaid interest on the 5's of '75 now is one-third of the principal or over $30,000,000.

Vast sums of interest are unpaid on the General Mortgage bonds.

Moreover, the company could not have operated at all but for moneys advanced by the R. F. C., the R. C. C., the P. W. A., and the bank. The purchase of equipment was made possible only by the borrowing of money through prior lien equipment securities given to the vendors.

charges must be reduced is certain. That a division of such charges into fixed and contingent, is desirable or necessary, may be accepted with equal confidence. The I. C. C. was confronted by a condition and not a theory. Approximately $120,000,000 of accrued and unpaid interest was due December 31, 1938. That amount has been nearly doubled since. Reduction is possible only by lowering the principal of the mortgages, and part of the interest on said mortgages must be contingent.**

Accepting this unavoidable conclusion, the necessary deduction follows that existing mortgages must be scaled down. But how? The court in *Consolidated Rock Products Co.* v. *Du Bois, infra,* has pointed the way and laid down the applicable rules for our guidance. Unfortunately that decision was announced after this plan had been approved by the I. C. C. That it necessitates a rejection of said plan has been asserted, as well as denied, by the opposing parties. That it must be our text for determining the disposition of this appeal is quite clear.

The *Consolidated Rock Products Company* case, the *Boyd* case, and the *Los Angeles Lumber Co.* case, *infra,* read together, lay down the rules governing simple, as well as the fact-complicated, reorganizations.

The Consolidated Rock Products case contains a complete statement of the applicable reorganization rules. It is entirely consistent with the holdings and intimations of the Los Angeles case. We find nothing in either case which would defeat the plan here in question, provided the evidence, and necessary findings are made, based on such evidence, and they establish the fairness of the plan.

The holdings of the Consolidated Rock Products case, here pertinent, are:

(a) The necessity of the application of the absolute priority principle to reorganizations of solvent and insolvent corporations;

(b) Interest accrued on bonds (not contingent interest which has not been earned) is entitled to the same priority as the principal;

(c) Future earning capacity of the enterprise is the

** "Whether or not the earnings may reasonably be expected to meet the interest and dividend requirements of the new securities is a *sine qua non* to a determination of the integrity and practicability of the new capital structure." *Consolidated Rock Products Co. v. Du Bois, infra.*

criterion for the determination of values of assets of commercial corporations, as well as of the practicability and fairness of the plan of reorganization, where as here, the assets are productive properties. In railroad reorganizations, values are to be determined by the rule stated in Sec. 77(e).

(d) There must be an approximate ascertainment of the value of the respective assets where different liens cover different properties;

(e) The absolute priority prineiple does not prevent creditors from being given inferior grades of securities or securities of the same kind as given to junior interests, provided the senior lienholders are given securities of the value equal to the value of liens displaced;

(f) Prior lien creditors must be compensated for the loss of their prior claim rights;

(g) Unified operation of debtor may well require the elimination of division mortgages in a plan of reorganization;

(h) Simplicity of capital structure may often be preferred to a highly complicated one difficult for security holders to understand;

(i) The new capital structure may be revolutionary and need not be patterned after the existing structure;

(j) Findings must be made on all vital issues, controverted and uncontroverted, and must include values of properties separately considered and also of Debtor's property as a whole. Findings must cover values of liens to be surrendered and values of securities given in exchange. They should specifically cover the ultimate (not evidentiary facts) facts upon which the values are based. They must show that fixed interest charges are included and show that values are based on income-producing factors.

Taking the appellants' contentions seriatim, we first consider the objections of the preferred and common stockholders.

Naturally their predicament excites our sympathy. Their unhappy situation, however, is in no way due to the plan of reorganization. In fact the plan was made necessary by the hopeless state of Debtor's finances, a condition which has grown worse each passing year for a decade.

Only the Debtor's bankruptcy proceeding and aid from the Government, in way of loans, have kept the creditors from barring the stockholders out of the picture some years back.

The Commission found,* under its method of calculation, that there was no equity remaining in the old company and the old stockholders, both common and preferred, have no legal right to a share in the securities of the new company. In passing it might be observed that it is not a question of the right of stockholders to receive something in the reorganization. A question of fact confronted the Commission and now confronts us. Neither the Commission nor the court is authorized or permitted to give these stockholders anything, if the Debtor's assets are of a value less than the aggregate of its debts. *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510; *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106; *Northern Pacific Railway Co.* v. *Boyd*, 228 U. S. 482. It is not a matter of discretion. The absolute priority principle forbids it.

This finding* is sharply challenged by the old stockholders who point to the present, sharp upturn of business activities, particularly railroads, stating that the first eight months of 1941 show an increase in gross operating revenues over 1940 of 22.8%, and estimate that the income available for fixed charges for 1941 will be $31,140,683. (Appellees challenge these figures on the ground no adjustment is made for 1941 Federal taxes or the raise in railroad wages just allowed.) Also present is the question of this court's power to base its decision upon 1941 statistics which are not in the record before us.

The stockholders also point to testimony which tended to show that reproduction cost, plus land values, gave Debtor and Terre Haute properties a total valuation of $861,677,370, a sum sufficient to give some value to the equity of the stockholders.

They also challenged the lack of a real finding on valuation, and assail the substitute finding of capitalization figure which was arrived at by using as a basis the average annual sum available for fixed charges. They state that this basic sum was greatly lessened by unusually heavy

* "* * We find that the equity of the holders of the debtor's preferred stock and its common stock has no value and the holders of claims in classes 24 and 25, therefore, are not entitled to participate in the plan."

maintenance charges—unnecessary replacements (though desirable) such as treated ties, etc.

We are well satisfied that the evidence supports the finding of the Commission approved by the District Court "that the equity of the holders of the debtor's preferred stock and its common stock has no value." And this is true even though the evidence of current earnings made since the plan was approved, is received and considered.

Assuming as we must that the commercial value of Debtor's property consists in the expectation of income from it (*C. C. C. & St. L. Ry. Co.* v. *Bacchus*, 154 U. S. 445), there is no support for a finding of value in Debtor's preferred or common stock. Debtor's property being productive, valuations based on other than earning bases may be considered only as such valuations may bear on earning capacity. *Consolidated Rock Products Co.* v. *Du Bois*, *supra*. But modifying and elaborating on this rule see 77(e), last paragraph.

If the Commission gave value to the common and preferred stock, it would have violated one of the first requirements of a valid reorganization as announced in the Consolidated Rock Products Company case. It would have taken property from the mortgagees and given it to the stockholders, an act which would not only have violated the law but would have transgressed all the rules of fairness which must be at the bottom of all reorganization plans.

The General Mortgage Bonds and the 5's of '75 may well be considered together because the argument of each is so closely connected with its attack on the other. The General Mortgage bondholders attribute the unfortunate condition of the system largely to the deficit which is yearly incurred in the western division of this road (which is liened by the 5's of '75).*

In view of the reversal and remanding of this case for

*It would not require much discernment to place the responsibility for this road's present predicament to the bad judgment of those who built the western division. They loaded the whole system with a hopeless debt, provided no means for its retirement and got, when this division was completed, a branch that produced an annual deficit of over five million dollars. But criticisms should not stop here. A management with ethics which would tolerate the Terre Haute transaction was sure, sooner or later to be applying to a court of equity or court of bankruptcy for protection against the hordes of insistent claimants with past due unpaid obligations. Proof of what may be done under honest and efficient management may be found in the records of the railroad since trustees under these bankruptcy proceedings took over.

the making of findings, which we find it is necessary to order, we will not discuss at great length, or in great detail, the fairness of the plan with respect to these two mortgages. It is sufficient to observe that the fact situation permits of a plan such as the Commission formulated and approved. The plan as such, ignoring the absence of findings, has support in the evidence. It violates no requirements (save findings) announced in the Consolidated Rock Products case.

Accepting the rule there announced for determination of value (to-wit, earning power) the 5's of '75 have, we think, no legitimate complaint. Sec. 77(e) does not change our conclusion.

The General Mortgage bondholders, apparently, underestimate the value of the new stock and the Series A and B bonds in the new organization. Moreover, it must be kept in mind that these General Mortgage bondholders, at present, have holdings that are far from Class A securities. They are bonds on which interest is in default in large sums and has been for a substantial period. The properties upon which this mortgage is a first lien can hardly stand alone. It is dependent in part for its showing upon other sections of the road. Its condition has not been improving. Its maintenance charges, especially in the winter time, are large. Unusually fine paved highways along its side, give promise of continued competition from trucks and busses, which is far from reassuring.

Accepting, as we do, the necessity for a drastic reduction in indebtedness and interest requirements and realizing that each of these divisions, to a certain extent, depends upon the existence and business of other branches of the system, we are unable to say the evidence fails to establish the fairness of the plan so far as these bonds are concerned.

If the proposition were an original one, it is true, we can readily see how a larger percentage of the new plan first mortgage bonds might have been given to holders of the General Mortgage bonds. On the other hand, while there is a difference in the priorities of the first mortgage bonds and the Series A bonds of the new issue, this may be made up in increased interest rates of the new bonds, especially if the increased revenues of the company, as disclosed during the year 1941, are maintained even in part. There is, however, in our opinion, a serious question pre-

sented due to the small percentage (25%) of the First Mortgage bonds given to the holders of old General Mortgage bonds. Our suggestion is that if any revision should be made, this percentage might be increased and the percentage of Series B and preferred and common stock, reduced.

The serious attack made on that portion of the plan which calls for the mandatory payment of $2,500,000 into the Additions and Betterments Fund, calls for no extended discussion. Counsel contend that the sum is excessive and unfair and does not affect all security holders equally. We think otherwise.

While there must be more fact findings upon which to reach a final conclusion on this, as well as the other phases of the plan, we believe the Commission is entirely sound in its position that a fund for Additions and Betterments should be created. In fact we find few things in the plan which appeal stronger than this provision.

Failure to provide against financial and commercial storms and other adversities which affect railroads, like other industries, accounts for much of the condition of the railroads today. The possible avoidance of such recurrence will be aided by this or a similar provision. It would be improper to pass directly upon the reasonableness of the amount, however, until the findings which must be made are before us. However, we may say that there is evidence that would amply warrant an allowance for such an item, and also the amount adopted by the Commission. But findings there must be, based on the evidence, which support both the allowance and the amount of the allowance.

Our present conclusion is that the record supports the new plan as far as the amount of indebtedness which this railroad will bear is concerned. We think the reorganization plan which simplifies the financial structure also is to be approved and commended.

This, (prospective income as basis of plan of reorganization), it seems to us, is the corner stone of a sound reorganization plan. What is the income upon which the new set-up is to rest? This is the first question that must be answered. And the answer must be a dependable one. For meeting the obligations of the new company can not be left merely to hopes of favorable winds. A decade of indisputable statistics is available. The realization of expected earn-

ings is essential to the future of Debtor. Every dollar of value of Debtor should be allotted to its creditors (and, if the showing warranted it, to the stockholders), but there is neither justification for, nor satisfaction in, a plan which tomorrow brings only a harvest of barren regrets.

No plan of reorganization (and for that matter, any original financing) can be justified, called safe, or sound, or honest, unless there is made provision, which has reasonable promise of fulfillment, for the meeting of corporate obligations, whether represented by notes or stock. Dependence on luck, unforeseeable future profits, or wild hopes is the first step toward bankruptcy and the end is often even worse than an experience in a court of bankruptcy.

We can not, at this time, give approval to the plan in all its details, however, without further findings of fact which the Commission must make.

Our conclusion that more findings are necessary, makes it unnecessary to discuss, save generally, the position of the Terre Haute and the Gary mortgages. Under the new plan they are wiped out and the new securities given. Simplification was thereby obtained, and we approve of that. It is quite impossible to approve of the disposition of the Terre Haute bond issues without having more specific findings. Whether this lease should not be now terminated presents a separate question, which can only be determined when findings are made. The same observation applies to the reorganization plan so far as it affects the Convertible Adjustment bonds, the Milwaukee and Northern bonds, and the Bellingham bonds. It may be observed that in our opinion there is evidence in the record to support the plan as proposed, but it cannot receive final approval until and unless there are findings made upon such evidence, and then the parties interested may have the right to review both the sufficiency of the findings to support the plan and the existence of evidence to support the findings.

This brings us to that phase of this appeal which is based upon the failure of the Commission to make the necessary findings required by the Consolidated Rock Products Company case. There is undoubted support for the argument that the Commission inferentially made findings when it allocated the new securities to the old mortgages. But the

fairness of that allocation is dependent upon the findings of fact. Without such findings we cannot intelligently approve or disapprove.

We appreciate that the findings of fact must, in the last analysis, be based upon evidence, much of which is to be found in the report of the I. C. C. Hence it may well be argued that the I. C. C. could make such findings by taking notice of its reports and the statistical information in its files bearing upon the income of this railroad and of its various branches. Reluctant as we are to do so, we nevertheless feel that under the decision of this controlling case, there must be a return of the cause to the District Court with direction to the District Court to return it to the I. C. C. and for that body to make the findings on issues vital to the question of values and equities as announced in said Consolidated Rock Products case. *Likewise, the findings must be so specific that the court may definitely see that in the new plan, provision for full compensation of cancelled old senior securities, and all prior preferred positions, is made.* The findings must be sufficiently complete on these matters, that the court may, from its examination, ascertain whether full compensation has been made for the entire bundle of rights which each of the creditors is called upon to surrender.

It would be begging the question to assume that findings were necessarily made by the I. C. C. when the allocation was made. We would be delegating to the I. C. C. an obligation which is ours. The Commission must formulate its plan. It must make fact findings supported by the evidence upon which its plan is based. We must independently determine whether the plan is fair and equitable. In reaching our conclusion we must ascertain (a) whether there is evidence sufficient to support the findings and (b) we must be able to say that the findings support the plan, and (c) the plan is fair and equitable.

As to the necessity and character of the findings, the court in the Consolidated Rock Products case spoke and the rule it announced applies to the I. C. C. in railroad reorganizations as fully as it applies to the District Court in other reorganization cases. Save as modified by Sec. 77 (e) the Commission should follow the opinion in that case.

In the report of the Commission there is a discussion of

the various factors which were deemed pertinent in its inquiry into values. Absent, however, were clear cut findings or values which are so essential to the intelligent approval of the plan. Our criticism is not directed to the fact that the findings were embodied in the Commission's report (a large part of which is devoted to a discussion and statement of the evidence) rather than stated specifically as findings. But the fault lies in the fact that we are left uncertain, or in the dark, as to the finding of the Commission. The evidence might support a finding of a larger or a smaller amount. Which should we accept? The fact finding body is the I. C. C. It must find. We cannot.

Somewhat similar was the situation in the case of *Smith* v. *Illinois Bell Telephone Company*, 282 U. S. 162, a case which arose from a three judge district court in this circuit. In the absence of specific findings the Supreme Court set aside the decree and remanded the cause to make the necessary and appropriate findings. It refused to accept the conclusions of the District Court as inferential expressions of its fact conclusions. See also, *Public Service Commission* v. *Wisconsin Telephone Co.*, 289 U. S. 67; *United States* v. *Magnolia Petroleum Co.*, 276 U. S. 160, and *Universal Battery Co.* v. *U. S.*, 281 U. S. 580.

The explicit holding of the Consolidated Rock Products case is so mandatory that further discussion is unnecessary. We can not accept the Commission's discussion of the evidence as a finding. Nor may we make findings, save where there is no dispute, or dispute is not serious, in order to sustain the plan.

No. 7686. This separate appeal (consolidated for argument with the other appeals) is from an order denying the Debtor's motion to have the list of creditors, particularly bondholders, revised and brought down to date.

We are not convinced that there was an abuse of discretion by the District Judge in denying this motion at the time it was made.

It must be conceded that intelligent action on the plan by the creditors is necessary as well as desirable. An up-to-date list of those who hold the bonds may be necessary in order to reflect widespread approval or disapproval. We are not fully advised as to the extent or correctness of the lists which are now available. Likewise

a list prepared when this motion was made may well have been premature. It could become almost worthless, through change of ownership, before the vote is taken. We think it best to leave the matter as it is, in the hands of the District Court, with the admonition that if and when the plan is approved, or its approval quite certain, there will be a complete and accurate list of creditors prepared, to whom the plan will be submitted for approval or rejection.

We believe the motion at the time was wisely denied, and the order of the court is affirmed.

The order of the District Court is reversed with directions to the District Court to set aside its order of approval and to remand the case to the I. C. C. for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as heretofore indicated. Each party will pay its own costs in this court.

Endorsed: Filed Dec. 4, 1941. Kenneth J. Carrick, Clerk.

And, on the same day, to-wit: On the fourth day of December, 1941, the following further proceedings were had and entered of record, to-wit:

Thursday, December 4, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company, *Appellant,*

7590 *vs.*

Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

Union Trust Co. and Illinois State Trust Co., as Trustees, *et al.*, *Appellants*,

7610 *vs.*

Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

Israel A. Abrams, *et al.*, *Appellants*,

7611 *vs.*

Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

H. C. Orton, *et al.*, etc.,
Appellants,
7612 *vs.*
Group of Institutional Investors, etc., *et al.*,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

Guaranty Trust Co. of New York, *et al.*, etc., *Appellants,*

7613 *vs.*

Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

Chicago, Terre Haute & Southeastern Ry. Co., Income Mortgage Bondholders' Committee, *et al.*, *Appellants,*

7614 *vs.*

Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

United States Trust Co. of New York, as Trustee, etc., *Appellant*,

7615 *vs.*

Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

Trustees of Princeton University, *et al.*, etc., *Appellants*,
7616 *vs.*
Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor.

E. Stanley Glines, *et al.*, etc., *Appellants*,
7617 *vs.*
Group of Institutional Investors, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to set aside the District Court's order of approval and to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein; and that each party will pay its own costs in this Court.

And afterwards, to-wit: On the eighteenth day of December, 1941, there was filed in the office of the Clerk of this Court, in cause No. 7612, a petition for modification of opinion, which said petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7612.

In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.

H. C. Orton *et al.*, *Appellants*,

vs.

Group of Institutional Investors, *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Michael L. Igoe, Judge Presiding.

PETITION OF PREFERRED STOCKHOLDERS COMMITTEE FOR MODIFICATION OF OPINION.

Come now, H. C. Orton, Karl A. Meyer, Rucker Penn, J. B. Johnston and D. C. Wolf, as Protective Committee for the Holders of Preferred Stock of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, appellants, by its attorneys, and respectfully present this, its petition for

modification of the Opinion in the above entitled cases, and in support of said petition respectfully show the following:

The Preferred Stockholders Committee believes that the Opinion of this Court, in so far as it applies to the preferred stockholders of the Debtor, is not consistent with the major premise upon which the reversal is based: the result is that a different standard is applied to the stockholders than to the creditors.

The decision of the Court is based upon the inadequacy of the findings of the Interstate Commerce Commission. The Opinion clearly instructs the Interstate Commerce Commission that before a Plan can be certified to the District Court, it must make findings, and that "the findings must be so specific that the Court may definitely see that in the new plan, provision for full compensation of canceled old senior securities, and all prior preferred positions is made. The findings must be sufficiently complete on these matters, that the Court may, from its examination, ascertain whether full compensation has been made for the entire bundle of rights which each of the creditors is called upon to surrender." (p. 19.)

The very absence of adequate findings which the Court holds is fatal so far as the other interested parties are concerned, must also be fatal so far as the stockholders are concerned. It is true that the Interstate Commerce Commission has made the bald statement that there is no equity for the preferred or common stockholders; but certainly this cannot be considered a finding such as was contemplated by this Court in its decision. It is obvious that the Court desires the Interstate Commerce Commission to make a definite allocation of value *in dollars* to the various properties of the Debtor and to its property as a whole. The Committee respectfully submits, therefore, that it is inconsistent with the general principle upon which this case is decided, for the Court to decide,—especially upon the inadequate condition of the present record—that the equity has no value. The provisions of Section 77, sub-section (e) provide that "if the proceedings are referred back to the Commission, the Commission shall proceed to reconsideration of the proceedings under the provisions of subsection (d)" of Section 77, which allows introduction of new evidence, and indeed promulgation of an entirely new plan. The Court has gone out of its way to give an expression of opinion as to what the Commission should consider when the proceedings are referred back to it. The first,

second and third full paragraphs on page 15 of the Opinion are clear and definite instructions to the Commission with respect to the treatment of the stockholders upon any reconsideration. The Act does not give the Court authority in such manner to tie the Commission's hands on particular findings of fact. Thus, it is important that the Circuit Court of Appeals should not circumscribe any new action by the Commission. It is the opinion of the Committee that these three paragraphs (hereinafter quoted) are objectionable because in effect they hamper and unduly influence such new consideration as must follow from a remanding to the Commission:

> "We are well satisfied that the evidence supports the finding of the Commission approved by the District Court 'that the equity of the holders of debtor's preferred stock and its common stock has no value.' And this is true even though the evidence of current earnings made since the plan was approved, is received and considered.
>
> Assuming as we must that the commercial value of Debtor's property consists in the expectation of income from it (*C. C. C. & St. L. Ry. Co.* v. *Bacchus*, 154 U. S. 445), there is no support for a finding of value in Debtor's preferred or common stock. Debtor's property being productive, valuations based on other than earning bases may be considered only as such valuations may bear on earning capacity. *Consolidated Rock Products Co.* v. *Du Bois, supra.* But modifying and elaborating on this rule see 77(e), last paragraph.
>
> If the Commission gave value to the common and preferred stock, it would have violated one of the first requirements of a valid reorganization as announced in the *Consolidated Rock Products Company* case. It would have taken property from the mortgagees and given it to the stockholders, an act which would not only have violated the law but would have transgressed all the rules of fairness which must be at the bottom of all reorganization plans."

It is inevitable that the Court will draw preliminary conclusions as to what the facts will disclose. But the Court itself has found in this case that conclusions of this sort may not form the basis of a fair and equitable plan of reorganization; only specific facts can be used as a criterion of fairness. As an example: Certainly the Court

did not have before it any facts which would indicate to it the present cost of reproduction new less depreciation, original cost of the Debtor's property and the actual investments therein,—as required to be considered under the last paragraph of Section 77 (e). The cost of construction and of the materials which are necessary for the completion of a railroad system similar to that of the Debtor, have increased vastly since 1940. It is entirely possible that the Interstate Commerce Commission in discharging the instructions of the Court will find that the physical value of the properties of the Debtor is far in excess of all of the Debtor's obligations, and that considering such value with other values the earning power of the property justifies a much larger capitalization. On page 20 of the Opinion this Court specifically recognized the possibility when it said "the evidence might support a finding of a larger or smaller amount." Should such a finding be reached, will this Court still care to include the three paragraphs above referred to? Would the Court not feel that the Plan —so far as it affected the stockholders—should require some participation, not exclusion? Might not the Court desire at least to include in the Plan a provision for the issuance of warrants to stockholders, such as is specifically authorized in paragraph (3) of subsection (b) of Section 77, which provides that a plan "may include for the purpose of preserving such interests of creditors *and stockholders* as are not otherwise provided for, provisions for the issuance to such creditors or stockholders of *options and warrants* to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan." (Italics ours.) The Committee respectfully submits that the Court in its decision in so far as it affects the preferred stockholders, is falling into the same error on which it orders reversal. The Court properly demands that the findings of the Interstate Commerce Commission be substantiated by further specific facts, yet it approves the elimination of this huge equity interest without these very findings which it finds so essential to the other phases of the proceeding. If there are sufficient dollars of value to warrant allotment of some to the stockholders, as the Opinion suggests on page 18, certainly this Court would not wish to foreclose them. Admittedly it has not the findings before it to determine how much value actually exists.

The Preferred Stockholders Committee urgently requests that this Honorable Court should not prejudge the treatment of the preferred stockholders of the Debtor in the face of the lack of specific findings which requires the reversal herein. Its opinion and order remanding the case to the Interstate Commerce Commission should be free from any instructions which limit the scope of the inquiry which the Commission must now undertake, and should not tend in any way to guide or otherwise influence the action of the Commission in its inquiry into the facts as they exist today, since Section 77 (e) specifically provides for complete reconsideration should the Plan be disapproved, and since this Court has ordered the Court below to set aside the order of approval and remand the case to the Commission.

The Preferred Stockholders Committee respectfully requests that the first three full paragraphs on page 15 of the Opinion of this Honorable Court should be deleted.

Respectfully submitted,

EDWARD R. JOHNSTON,
ALBERT K. ORSCHEL,
11 South La Salle Street,
Chicago, Illinois,
Attorneys for Appellants.

Endorsed: Filed Dec. 18, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twentieth day of December, 1941, the following further proceedings were had and entered of record, to-wit:

Saturday, December 20, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

7590, 7610 thru 7617.
In the Matter of
Chicago, Milwaukee, St. Paul & Pacific Railroad Company,
Debtor.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for the Group of Institutional Investors and Mutual Savings Bank Group, appellees herein, it is ordered that the mandates of this Court in these appeals be, and they are hereby, stayed for a period of sixty days, in order to afford said appellees opportunity to prepare and file in the Supreme Court of the United States their petition praying for review of the decision of this Court on writ of certiorari, and that, if within such sixty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court certifying that the certiorari petition, record and brief have been filed, the stay of mandates shall continue until final disposition of this matter by the Supreme Court.

And on the same day, to-wit: On the twentieth day of December, 1941, the following further proceedings were had and entered of record, to-wit:

Saturday, December 20, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

7590, 7610 thru 7617.
In the Matter of
Chicago, Milwaukee, St. Paul & Pacific Railroad Company,
Debtor.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for the Group of Institutional Investors and Mutual Savings Bank Group, appellees herein, it is ordered that the Clerk of this Court transmit to the Clerk of the Supreme Court of the United States as a part of the record on the petition for certiorari to the Supreme Court, without printing or reprinting, the original transcript of all proceedings, evidence and exhibits before the Interstate Commerce Commission, including the said Commission's reports and orders approving the plan, heretofore certified and filed in the District Court; the originals of all pleadings filed in the District Court and included in the record on appeal having exhibits attached, and of any other pleadings, reports and exhibits in these proceedings not printed in the District Court's printed record, including all Special Master's reports; and all general balance sheets and monthly income accounts filed since November 13, 1940, to date; all of which were transmitted by the Clerk of the District Court and which pursuant to the stipulations of all the parties and orders of the Court constituted a part of the record on appeal without printing or reprinting.

And afterwards, to-wit: On the twenty-ninth day of December, 1941, there was filed in the office of the Clerk of this Court, an answer of appellees, Life Insurance Group and Mutual Savings Bank Group, to petition for modification of opinion, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 7590, 7610-7617.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Appellant,
vs.
Group of Institutional Investors, Etc., *et al.*,
Appellees.
(And consolidated appeals)

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Michael L. Igoe, Judge Presiding.

ANSWER OF APPELLEES, LIFE INSURANCE GROUP AND MUTUAL SAVINGS BANK GROUP, TO PETITION OF PREFERRED STOCKHOLDERS COMMITTEE FOR MODIFICATION OF OPINION.

Life Insurance Group and Mutual Savings Bank Group respectfully object to the petition to strike from the opinion herein the paragraphs which state the Court's considered judgment, on the record before it, that the preferred and common stock of the debtor is without value, and in support of their objection appellees show:

(a) *Finding by the Interstate Commerce Commission.* The report of the Interstate Commerce Commission approving a plan of reorganization, duly certified to the court, provided:

> "We find that the equity of the holders of the debtor's preferred stock and its common stock has no value and the holders of claims in classes 24 and 25, therefore, are not entitled to participate in the plan." (R. 2260.)

The "reasons" for this conclusion were fully stated by the Commission in its report approving a plan of reorganization as required by Section 77(e). (R. 2258-2260.)

(b) *Affirmance by the District Court.* The order of the District Court approving the plan provided:

> "The Finding of the Commission that the equity of the preferred and common stockholders of the Debtor (Classes 24 and 25) has no value is affirmed."

The controlling reasons for such affirmance of the finding were stated in the Memorandum Opinion of the District Court. (R. 1873.)

(c) *Approval by This Court.* On the record before it, this Court passed on the finding that the equity has no value, in precise and categorical terms, and sustained the action of the Commission and the District Court in respect thereto, stating in part:

> "We are well satisfied that the evidence supports the finding of the Commission approved by the District Court 'that the equity of the holders of the debtor's preferred stock and its common stock has no value.'
>
> * * *
>
> "If the Commission gave value to the common and preferred stock, it would have violated one of the first requirements of a valid reorganization as announced in the Consolidated Rock Products Company case. It would have taken property from the mortgagees and given it to the stockholders, an act which would not only have violated the law but which would have transgressed all the rules of fairness which must be at the bottom of all reorganization plans."

We respectfully pray that the Court not modify its judgment on this issue and that the petition of the preferred stockholders be denied.

Respectfully submitted,

KENNETH F. BURGESS,
DOUGLAS F. SMITH,
Attorneys for Life Insurance Group,
11 S. La Salle St.,
Chicago, Ill.

FRED N. OLIVER,
Attorney for Mutual Savings Bank Group,
110 E. 42nd St.,
New York, N. Y.

SIDLEY, MCPHERSON, AUSTIN & BURGESS,
OLIVER & DONNALLY,
Of Counsel.

Endorsed: Filed Dec. 29, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the ninth day of January, 1942, the following further proceedings were had and entered of record, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 7590, 7610-7617.

October Term, 1941, January Session, 1942.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific R. R. Co., Debtor.	On Motion to Modify The Order of the Court as to Costs.

January 9, 1942.

On Motion to Modify the Order of the Court as to Costs, It Is Ordered, there be stricken from the order disposing of the case, the words, "Each party will pay its own costs in this court." In place thereof shall be inserted, The trustees of the property of the Debtor shall pay the costs of printing the transcript of record, which sum is $3,327.20. The said trustees of said Debtor are hereby directed to pay said sum to the Clerk of this Court. The sums heretofore paid by each appellant upon the filing of its appeal, shall be borne by each said appellant.

And afterwards, to-wit: On the twelfth day of January, 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court on motion to modify opinion filed herein on Dec. 4, 1941, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 7590, 7610-7617.

October Term, 1941, January Session, 1942.

In the Matter of

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R. R. CO.,

Debtor.

} **On Motion to Modify Opinion.**

January 12, 1942.

Before EVANS, and KERNER, *Circuit Judges*, and LINDLEY, *District Judge*.

PER CURIAM. We are asked to modify our opinion announced in this case, by striking therefrom three paragraphs, beginning with the words, "We are satisfied that the evidence supports the finding of the Commission," appearing on page 15 of the opinion, and ending with the words, "* * * which must be at the bottom of all reorganization plans."

Because counsel seemingly misunderstand our position upon the failure of the Commission to make necessary findings of value so as to allocate the new securities amongst existing bondholders and creditors, we deem it necessary, or at least advisable, to make our position clear.

It was, and is, our opinion that the I. C. C. made a sufficiently specific finding as to value of the equity represented by the common and preferred stock of the Debtor, so as to permit the court to intelligently review this issue, the determination of which is necessary to a disposition of the other questions presented by the reorganization plan.

On these other questions there was lacking the necessary findings by the I. C. C. to permit us to approve or disapprove of the value of the old securities and the value of the new securities, given in exchange for them.

Now, to make our position entirely clear, we add this memorandum and hold that the finding of the I. C. C. as to absence of value of old common and preferred stock, is specific, definite and certain, and fully meets the rule which requires finding on values of assets.

Second, we meant to hold, and do hold, that the evidence supports this finding, that there is no value to either the common or preferred stock of debtor. It follows that this branch of the case, the value of the equity of the debtor, evidenced by the common and preferred stock, is closed, and the I. C. C. need not further investigate or make further finding on this issue unless it is convinced that changed conditions in railroad earnings warrant it. In other words, the I. C. C. has jurisdiction of the matter and may, although it is not required to do so, re-examine the evidence, or receive additional evidence, if in its judgment, justice to the parties requires it.

The motion to amend the opinion is

DENIED.

Endorsed: Filed Jan. 12, 1942. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twelfth day of January, 1942, the following further proceedings were had and entered of record, to-wit:

Monday, January 12, 1942.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

Nos. 7590, 7610 thru 7617.

In the Matter of
Chicago, Milwaukee, St. Paul & Pacific Railroad Company,
Debtor.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the motion to modify the opinion of this Court filed herein on December 4, 1941, be, and it is hereby, denied.

And afterwards, to-wit: On the nineteenth day of December, 1941, there was filed in the office of the Clerk of this Court, a praecipe for record, which said praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 7590, 7610-7617.

In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
Chicago, Milwaukee, St. Paul and Pacific Railroad Company, *Appellant,*	Honorable Michael L. Igoe, Judge Presiding.
vs. Group of Institutional Investors, etc., *et al.*, *Appellees.* (And consolidated appeals)	

PRAECIPE FOR RECORD.

To Kenneth J. Carrick, Esq., Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Please prepare certified transcript of the record in the above entitled cause for filing in the United States Supreme Court, pursuant to Supreme Court Rule 38, including, in addition to the record on appeal herein, both printed and unprinted pursuant to the stipulations of all the parties and the orders of the District Court and of this Court referred to in paragraph (1) below, the following proceedings in this Court:

(1) First, second and third stipulations of all the parties as to printing of the record on appeal and authorizing the use of certain originals, as approved by the orders entered herein on March 22, 1941, March 28, 1941, and April 17, 1941, respectively.

(2) Order staying submission of the plan of reorgani-

zation until determination of the appeal, entered by this Court on February 18, 1941.

(3) Order denying petition of the Group of Institutional Investors, motion of the Interstate Commerce Commission, and motion of the Reconstruction Finance Corporation, to vacate the order entered by the Court on February 18, 1941, and to dissolve the stay of the submission of the plan of reorganization by the Interstate Commerce Commission to the creditors, without prejudice to the right to renew same at the hearing of this cause on the merits, entered by this Court on April 7, 1941.

(4) Order denying the motion of the Institutional Groups for dissolution of the stay of submission of the plan of reorganization, without prejudice to the right to reconsider the motion in connection with the hearing on the merits of the appeals, entered by this Court on June 18, 1941.

(5) Opinion.

(6) Judgments.

(7) Any and all petitions for rehearing, answers thereto and orders thereon.

(8) Order staying mandates.

(9) Order directing Clerk to transmit to Clerk of the Supreme Court as a part of the record on certiorari, without printing or reprinting, the original transcript of all proceedings, evidence and exhibits before the Interstate Commerce Commission and certain other originals.

Kenneth F. Burgess,
Douglas F. Smith,
Attorneys for Life Insurance Group,
11 S. La Salle St.,
Chicago, Ill.

Fred N. Oliver,
Attorney for Mutual Savings Bank Group,
110 E. 42nd St.,
New York, N. Y.

Sidley, McPherson, Austin & Burgess,
Oliver & Donnally,
Of Counsel.

Endorsed: Filed Dec. 19, 1941. Kenneth J. Carrick, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed made in accordance with the præcipe for record filed on the nineteenth day of December, 1941, in the following entitled causes:

Cause Nos. 7590, 7610 through 7617.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of January, A. D. 1942.

Kenneth J. Carrick,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

[fol. 2340] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 11

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2341] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 12

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2342] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 13

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2343] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 14

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2344] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 15

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2345] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 16

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2346] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 17

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2347] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 18

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2348] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 19

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2349] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 32

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.